

- Property insurance covering the Contractor's property used on the Project (including scaffolding and other equipment).

If the parties want to require the Contractor to purchase any of these other coverages, they need only check the boxes next to the descriptions of the applicable policies. Exhibit A §A.3.4 allows the parties to require the Contractor to maintain a Payment or Performance Bond.

These lists of optional coverage in Exhibit A may prompt the parties to think about the nature of the work and whether these other types of insurance are appropriate in addition to the required coverages. However, if the parties simply want the standard coverages historically required by A201, they may simply ignore the optional coverage sections and fill in the required policy limits/sublimits and penal sums for any bonds.

Prohibited Exclusions

Exhibit A §3.2.2.2 states the Contractor's liability insurance "shall not" contain an exclusion or restriction of coverage for these 11 risks:

1. Claims by one insured against another insured (a "cross-liability" or "insured vs. insured" exclusion);
2. Damage to the Contractor's completed Work caused by a Subcontractor's Work;
3. Bodily injury other than to the Contractor's employees;
4. Indemnity claims under §3.18 of the General Conditions arising out of injury to the Contractor's employees;
5. Loss excluded under a prior work endorsement;
6. Physical damage under a prior injury endorsement;
7. Claims related to residential construction if the Work is to be performed on such a project;
8. Claims related to roofing if the Work involves roofing;
9. Claims related to exterior insulation finish systems (EIFS), synthetic stucco, or similar coatings or surfaces, if the Work involves such coatings or surfaces;
10. Earth subsidence or movement, when the Work involves such hazards; and
11. Explosion, collapse, and underground hazards, when the Work involves such hazards.

In some areas, a policy without one or more of these exclusions may not be available. Even if available, most Contractors do not have the bargaining clout to negotiate premium costs, which may make eliminating these exclusions cost-prohibitive. In either case, Contractors should dis-

cuss with the Owner whether to modify §3.2.2.2 to delete any provision that is impossible or impractical to fulfill.

Cancellation or Expiration of Contractor's Liability Insurance

A201TM-2007 §11.1.3 provided that the Contractor's liability insurance policy and any certificates of insurance issued regarding that policy had to contain a provision that coverage would not be canceled or allowed to expire without 30 days' prior written notice to the Owner.

However, under California law, an insurer need only mail notice of cancellation of a commercial insurance policy to named insureds. Ins C §677.2(b). California law also provides that a certificate of insurance must state that it is not part of, and does not alter the terms of, the insurance policy. Ins C §384. Courts have held that additional insureds, even if named in a certificate of insurance, were not entitled to notice of cancellation. See, e.g., *Riverport Ins. Co. v Oakland Community Hous., Inc.* (ND Cal 2009) 668 F Supp 2d 1235, 1238; *Kotlar v Hartford Fire Ins. Co.* (2000) 83 CA4th 1116, 1121 n3, reported at 24 CEB RPLR 55 (Jan. 2001).

A201TM-2017 §11.1.4 requires that when the Contractor becomes aware of impending or actual cancellation or expiration of any required insurance, the Contractor—not the insurer—must notify the Owner within 3 business days. Unless the lapse arises from an act or omission of the Owner, on receipt of such notice, the Owner has the right to stop the Work until the lapse is cured by the Contractor. Furnishing such notice by the Contractor does not relieve the Contractor of any obligation to provide any required coverage.

Excess or Umbrella Liability Coverage and "Actual Payment" of the Underlying Limits

Exhibit A §A.3.2.4 states the Contractor may achieve the required limits and coverage for CGL insurance and auto liability insurance through a combination of primary and excess or umbrella liability insurance. However, §A.3.2.4 further provides that any excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurer.

Many excess policies permit the primary policy limit to be exhausted by payment by the primary insurer or the insured. However, some provide that the excess insurer will be liable only after all primary insurers have paid, or have been held liable to pay, the full amount of the primary policies. In *Qualcomm, Inc. v Certain Underwriters at Lloyd's, London* (2008) 161 CA4th 184, 193, the court found that such a provision was unambiguous and precluded excess coverage from being triggered when the insurer settled with the primary insurer for less than the primary policy limit. Excess policies should be reviewed to ensure they do not conflict with Exhibit A §A.3.2.4.

Completed Operations Coverage

An owner, developer, contractor, or subcontractor can incur liability both while work is in progress and after its completion. Claims for injuries arising while work is in