



MEMO

To: Developer Community
From: Anne Berman, Director of Real Estate Development
Date: March 10, 2023 (*Updated April 2023*)
Subject: Program Bulletin 2023-1: Insurance Guidelines

RIHousing is issuing this Program Bulletin to re-introduce the Rhode Island Housing and Mortgage Finance Corporation (“RIHousing”) Insurance Guidelines (the “Guidelines”) to our development partners. The Guidelines were created with the assistance of a consultant who specializes in risk assessment and insurance management consultancy. They are designed to provide both RIHousing and our borrowers with protection from financial loss. In May of 2022, the Guidelines were amended to include revised guidelines for Smaller Properties with construction costs under \$3,000,000.

Borrowers are advised to review these Guidelines with their development team members and their insurance agents early in the development process to ensure (i) compliance with the requirements and (ii) that all costs associated with the Guidelines are budgeted. RIHousing will no longer be entertaining waiver requests under the Guidelines unless there are compelling reasons that add significant costs.

To assist with an understanding the Guidelines, we have compiled the following FAQs.

1. What is a subrogation waiver?

Subrogation is a legal right where an insurance company can recover claim payments it made on its insured’s behalf (by stepping into the shoes of the person/entity insured) if the accident or incident was caused by another negligent party or parties. A waiver of subrogation, sometimes referenced in an insurance policy as a “*waiver of transfer of rights of recovery against others to us*”, is where the insurance company agrees to waive their subrogation right against a specified party or all parties.

2. Why is subrogation waiver required?

A waiver of subrogation is required to ensure, that once a claim is paid on behalf of the insured, for example the borrower, the insurance carrier will not pursue any further actions against the specified (waived) party to recover their money.

Under the RIHousing Multi-Family Insurance Requirement Guidelines, a waiver of subrogation is required for Builders Risk, Property, Commercial General Liability, Auto, Umbrella or Excess and

Workers' Compensation policies. Most insurance companies are generally agreeable to waiving their subrogation rights at no cost. Some workers' compensation carriers charge a small premium for the waiver of subrogation endorsement.

3. Is Builder's Risk and Property insurance required during construction?

Generally, Builder's Risk insurance is required for buildings under construction and Property insurance is required for completed buildings. Buildings under construction require specialized coverage to meet the unique risks associated with a building that changes daily. Builder's Risk insurance covers certain kinds of loss or damage to materials, equipment, and buildings under construction. Examples of risk during construction include damage to or theft of materials, equipment, and work-in-progress and damage to or theft of materials in transit or stored off the property. Construction sites may be targeted by thieves, especially if the property under construction is not yet occupied or not adequately secured.

A Builder's Risk policy provides coverage from the time construction begins until the project's completion. Additionally, a Builder's Risk policy may provide coverage for other costs, sometimes called soft costs, such as lost rental income due to a project taking longer than planned, rental costs because equipment is needed longer than planned and extra interest if payback on loans is delayed along with the building process.

A standard Property policy typically only covers finished structures on the property, and their contents, if covered. A Property policy would normally cover only the hard cost of any property damage, and loss of rental income, if endorsed onto the policy.

4. What should the Builder's Risk and/or Property insurance amount be? Why?

The Insurance Requirements, set to ensure adequate limits, say the Builder's Risk insurance for the building shall be "in an amount not less than 100% of the completed value of the project." The guidelines say the Property insurance for the building shall be "in an amount not less than 100% replacement cost of the building and other improvements." This requirement will ensure that, in the event of a loss, the borrower will recoup funds to replace the building they were borrowing to buy and/or build and to protect the interests of RIHousing.

For a project undergoing material construction, rehabilitation or renovation to a single building, the best method is usually to cover the entire building on a Builder's Risk policy including an adequate amount for any remaining existing property (property that existed and will become part of the project). For multiple buildings or partial rehabilitation, renovation, this can be more challenging and involve the use of both Builder's Risk and Property policies. Regardless, from a limit perspective, 100% of the total replacement cost of the buildings must be insured, plus any soft costs including delay costs (such as interest payments), added professional fees, and lost rents to insure the financial viability of the borrower in the event of damage to the project.



If the project is complex and must be covered by a combination of the Property and Builder's Risk, you may need to consult with RIHousing to determine an adequate limit for each policy.

5. Is Builder's Risk required on Rehabilitation or Renovation projects?

Insurance is required for any rehabilitation or renovation project. The projects, depending on their size and scope, may be covered by either a Builder's Risk or Property policy. The Property policy may cover small interior renovation projects; however, the borrower should confirm same with its insurance company. In the case of a renovation or construction project to be covered by a Property policy, the certificate of insurance is required to specify the extension of coverage. If the property carrier will not provide coverage for construction projects, borrowers should either purchase a Builder's Risk policy or check with their brokers to see if a policy such as an installation floater may be issued.

6. Why are Single entity companies required to provide evidence of Worker's Compensation insurance?

A borrower entity may not have any employees itself but could be the "statutory employer" for a contractor/subcontractor employee with a Workers' Compensation claim. For example, if the borrower hires a contractor who does not carry Workers' Compensation (if the policy premium was unpaid for a day, for example) and one of that contractor's employees is injured at the borrower's property, the borrower could be deemed to be the statutory employer and required to pay the medical and disability costs of the injured party. The purchase of a small Workers' Compensation policy protects the borrower from financial harm in the event of an injury to its own employee or if they are deemed to be the statutory employer of another party's employee.

7. Can Automobile insurance be waived?

Automobile insurance is not generally waived. As stated above, the purpose of the insurance requirements is to protect the borrower from financial loss. A borrower may be found negligent for an auto accident arising from its owned, hired or borrowed or non-owned (including its contractor's) vehicles. An example of an accident involving a non-owned auto would be if the borrower's employee was negligent in an accident related to its work duties. A borrower should usually be able to provide evidence of personal automobile insurance at a minimum. Non-owned automobile coverage is typically available to personal borrowers as well as entities for very modest premiums if they do not have an automobile.

8. Why is Flood insurance required for properties not located in a flood zone?

The requirement for Flood insurance is also to protect the borrower from unexpected financial loss. Though flood zones are designated areas where there is a higher statistical probability of a flood occurring, the FEMA website says, "Statistics show that people who live outside high-risk areas file more than 25 percent of flood claims nationwide." The website also advises "1 inch of

water can cause \$25,000 worth of damage to your home. 18 inches or more of water could mean repairs to the electrical system and the heating and cooling system.” The requirement for Flood insurance is to protect the borrower from these types of financial losses.

9. Why is an “N” required on the Workers’ Compensation section of the Certificate of Liability Insurance for “Any proprietor/partner/executive officer/member excluded?”?

Workers’ Compensation insurance largely protects the insured borrower from liability lawsuits from its employees through a doctrine known as “exclusive remedy”. Exclusive remedy, provided by Workers’ Compensation, provides the borrower immunity from lawsuits in exchange for coverage, subject to some exceptions that vary by state.

Each party excluded from a workers’ compensation policy may be able to sue the borrower/employer. The more parties excluded from workers’ compensation coverage, the more potential exposure to the borrower for liability claims, which are more expensive because they can include damages for pain and suffering. The guidelines require all eligible employees to be covered for Workers’ Compensation.

10. If a development is 100% homeownership (built to be sold/no rentals), is Builder’s Risk – rental income/business income required? Why?

It is not required. The rental income requirement only applies to rental properties.

11. Can be borrower be added as “Additionally Insured to the General Contractor’s liability insurance policy? Why?”

The purpose of the insurance requirements is to protect the borrower from financial harm. During construction you want the borrower to have their own general liability insurance in case they are sued for an injury or property damage as a result of the construction operations. The borrower being included as an additional insured on the general contractor’s policy does not fully cover their liability because the policy does not cover the sole negligence of the borrower. For example, if a contractor employee or third party/member of the public was injured at the property due to a hazard that the borrower alone created (or was alleged to create), the borrower would not have any coverage under the GC’s policy. The GC’s policy is meant to cover the GC and provide some coverage to the borrower in the event they are also sued as a result of the GC’s negligence. The borrower does not have any coverage for their sole negligence under the general contractor’s general liability policy and is not fully protected using that option.



**12. Why does a property owner need products and completed operations coverage?
(Products – Comp/Op Agg)**

Property owners who build and sell properties need products and completed operations coverage because they can be sued for bodily injury or property damage after construction of the property for up to ten years, per the statute of repose. A claim example – An improperly installed light fixture in a completed property falls from the ceiling and injures one or more parties. The property owner may believe they are covered by the general contractor’s products and completed operations coverage for this type of claim. While there may be some coverage for the property owner, depending on the scope of additional insured coverage provided, there is never any coverage for the property owner if claim that arises from the sole negligence of the property owner. If the property owner made all of the decisions about the light fixture installation (or installed the light fixture), there would be no coverage under the general contractor’s insurance for the property owner. Products and completed operations coverage is usually included under a standard commercial general liability policy, with a limit either the amount of the per occurrence limit, for example \$1,000,000, or the general aggregate limit, for example \$2,000,000.