Department of Consumer & Business Services (DCBS)
Facts about contractor liability insurance in Oregon

Are contractors required to purchase liability insurance?

Oregon law requires building contractors to carry general liability insurance, which includes products and completed operations coverage. The state Construction Contractors Board (CCB) will not issue or renew a contractor license without proof of insurance. Coverage limit requirements vary depending on the license category. Many contractors carry coverage in excess of CCB's requirements.

What does general liability insurance cover?

General liability insurance covers property damage and bodily injury losses caused by the contractor that occur as a result of his or her work. It does not provide coverage for poor workmanship or construction defects.

Limitations on these insurance contracts vary from insurer to insurer. Exclusions in a policy for specific exposures such as multi-family dwellings, tract home projects, condominium construction, and exterior insulation finishing systems are common. Every policy is different, so it is especially important for the policyholder to understand his or her coverage.

General liability can be written on an occurrence or a claims-made basis:

> ***Occurrence*** policies provide coverage for liability that occurs while the policy is in force, regardless of when the claim is reported. Occurrence policies can also be issued with a manifestation trigger, providing coverage only when the first manifestation of bodily injury or property damage occurs during the policy period. Under current Oregon law a claim can be brought for up to 10 years after completion of a project.
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> ***Claims-made*** policies provide coverage for claims that are reported while the policy is in force. Often the claims-made coverage is subject to a "retroactive date" and will not cover claims that are made while the policy is in force that are due to occurrences that were before the retroactive date. Claims reported after the policy is cancelled or replaced are not covered unless the contractor purchases an "extended reporting" option, sometimes known as "tail coverage."

Policies for contractors written on or after January 1, 2008 must include products and completed operations coverage "according to the terms of the policy and subject to applicable policy exclusions." The certificate of insurance or electronic proof of coverage provided to the CCB is required to document that the products and completed operations coverage is included.

What are the current issues surrounding contractor liability insurance?

Premium rates for contractor liability insurance have increased in recent years. At the same time insurers' criteria for issuing policies are tighter. Many contractors find that they either face premium hikes, or their policies are canceled or non-renewed. It may be difficult to obtain new coverage.

Contractors who work on the envelope of the structure, such as residential builders, framers, siders, roofers, and window and door installers, have been particularly hard-hit. In some cases contractors find that while they may be able to obtain or renew coverage, the contract is more limited than it was previously. This leaves the contractor with increased exposure to uninsured liability risk.

How much has the cost of this insurance increased?

The rating bureau loss costs which insurers use to determine their final premiums for contractor classes have increased an average of 18 percent for products and completed operations liability coverage. Changes in payroll or gross sales are other factors that affect contractor liability premiums. Often the more dramatic rate changes experienced by individual contractors stem less from rate increases by their existing carrier than from situations where their coverage is cancelled and they are unable to find a new policy at a similar price. Upon moving to a new insurer, the premium is typically higher. The new coverage may also be less extensive.

Why have costs increased so sharply?

The insurance industry and others frequently cite a variety of factors that contribute to increased premiums and tighter underwriting standards, including:

- Increased claims and losses stemming from the introduction of new building products or construction methods that result in water damage, mold, and other problems,
- Increased litigation stemming from contractor performance issues, and
- Lower than expected investment returns due to changes in the interest rate environment.

What companies sell general liability insurance for contractors?

In February 2008, CCB records show 390 different insurers providing the required coverage. In April 2006, there were only 294 carriers. Most coverage, however, comes from 10 carriers. In February 2008, the top 10 companies covered 21,665 of the approximately 45,000 licensed contractors in Oregon.

Insurance is provided by admitted and surplus lines carriers as well as risk retention groups and risk purchasing groups. Admitted insurers have certificates of authority and are authorized to sell insurance in Oregon. Surplus lines carriers are insurers that do not have certificates of authority in Oregon, but they can still insure contractors who cannot get coverage in the regular, admitted market.

Risk retention groups and risk purchasing groups provide liability insurance to their members. Membership fees and the ability to assess members for losses over the expected level are sometimes a part of the group agreement. The groups are formed under federal mandates, and are exempt from state regulation except for certain specific guidelines.

According to license renewal data from CCB, in July 2002 10 percent of the market was in surplus lines, with 90 percent written by admitted carriers. The percentage of policies written in the admitted market fell in recent years. At the end of 2007, 85 percent of Oregon contractors were written in the admitted market.

In Oregon, 15 active risk retention groups are providing coverage for licensed contractors that meets the CCB requirement for licensing purposes.

Doesn't the state approve insurance premiums? Could it just put a cap on rates?

The state cannot cap premiums. Under current law, rate changes by admitted insurers are subject to Insurance Division review. The rate filings insurers submit to the Insurance Division must have actuarial support and comply with all statutes, rules, and Insurance Division bulletins.

Each admitted insurer has to show that its rates are appropriate. Insurers have to charge enough to maintain appropriate reserve and surplus funds to protect them (and their policyholders) from unanticipated losses.

If a rate filing by an admitted insurer does not meet the requirements, or violates Oregon law, the Insurance Division will require the insurer to make changes or provide actuarial supporting information to demonstrate compliance with the law. The Insurance Division does not have the authority to deny or cap a rate change based on policyholders' real or perceived hardship in the face of increased rates. A rate denial can only be based on inadequate actuarial support for the rate or on failure to comply with Oregon law.

Surplus lines carriers, risk retention groups and risk purchasing groups are not subject to Insurance Division rate review.

What has been done to address these issues?

In 2004 the CCB and the DCBS Insurance Division held a public fact-finding hearing to consider the possibility of creating a market assistance plan (MAP). A MAP is a clearinghouse intended to help match businesses with insurance companies that can offer them coverage. MAPs do not reduce premiums or guarantee that businesses will be able to find coverage, but they can reduce the time and paperwork required to find the coverage that is available in the existing market.

DCBS created a MAP for construction contractors, in collaboration with CCB, and unveiled it in September 2004. The MAP features a Web site at http://ccbed.ccb.state.or.us/contractorsmap/, where contractors can search for insurers willing to provide coverage and insurers can register to be available to contractors seeking coverage.

In 2005 the Oregon Legislature created a Construction Claims Task Force (CCTF) to address increasing construction claims and rising construction liability insurance premiums. Over a period of 18 months the nine-member task force studied and evaluated the causes and extent of construction defects, as well as the need for consumer protection and the availability and affordability of contractor liability insurance.

The CCTF delivered 11 recommendations to the 2007 Oregon Legislature. The report included recommendations for reducing construction defects, enhancing consumer protection and improving insurance affordability and availability. A summary of the recommendations is outlined on the CCTF Web site at http://egov.oregon.gov/DCBS/CCTF/.

The 2007 Oregon Legislature, as a result of the CCTF recommendations, passed three pieces of legislation:

- **HB 2654** consolidated many of the CCTF recommendations and made several changes to residential contractor regulations, including requiring contractors to carry general liability insurance that includes products and completed operations coverage; requiring CCB to establish continuing education requirements for contractors; requiring CCB to establish standard contract terms for construction contracts; requiring a contractor to offer, in writing, a warranty for the purchaser of a new residential structure; and streamlining standards and procedures for contractor delivery of consumer notices.

- **HB 2751** added a provision to the Insurance Code to allow authorized insurers to compete with surplus lines carriers in the market for contractor group project liability insurance without violating Oregon laws.

- **HB 2478** clarified the authority of the DCBS Building Codes Division to set uniform standards for permit, certificate of occupancy, and inspection requirements.

Several of the CCTF recommendations did not require legislation and are being adopted through administrative action.