

# The Changing Insurance Market For Construction



## FAULTY WORKMANSHIP: FINALLY A SOLUTION?

Insurance coverage for the cost to repair or replace faulty workmanship has largely eluded contractors and clients in the construction industry. While there have been successful outcomes for certain claims, and some patchwork solutions available, there has been no consistent and comprehensive solution.

While “faulty workmanship” usually is not defined in the insurance policy, this term generally refers to work that was performed incorrectly, resulting in a flawed product. During the course of construction there are certain types of insurance policies that a contractor or client would look to for coverage in the event that something goes wrong with a project; these primarily include general liability, professional liability and builder’s risk. None of these policies previously have been designed to address faulty workmanship for the reasons described below.

## HISTORICAL APPROACH

The general liability policy is meant to cover losses incurred by third parties for bodily injury and property damage that result from an occurrence on a job site. This policy does not intend to insure incorrect work on a project, the resulting property damage to a contractor’s work while the work is being performed, resulting property damage to the completed work itself or any related resulting losses. Many contractor’s general liability policies affirmatively include an exclusion for losses resulting from work that has been performed improperly. Limited affirmative coverage for faulty workmanship has been available in the general liability market, but the availability has been inconsistent and usually at severe sublimits.

Professional liability policies are designed to cover negligence in the performance of professional services. Actual construction activities are not considered professional services and therefore the policy is not intended to cover negligence in their performance. Professional liability policies are not warranty/guarantee policies, and warranties/guarantees usually are excluded. Furthermore, contractor professional policies also usually include a faulty workmanship exclusion that specifically excludes “the cost to repair or replace faulty workmanship.”

Builder’s risk policies are a type of property insurance that helps to protect buildings during the course of construction or renovation. These policies are meant to insure covered materials and equipment for direct physical loss or damage. Most builder’s risk policies exclude faulty or defective design, materials and workmanship, and would not respond to the cost to repair or replace the flawed work product. It is worth noting that some policies, if properly constructed, could cover resulting damages to other property caused by the faulty work.



## NEW DEVELOPMENTS

The insurance market has begun to respond to this widespread gap in coverage for contractors and owners by offering affirmative coverage for faulty workmanship. NFP works with construction professionals who are leading the market in this space, and are offering a faulty workmanship endorsement to their contractors professional policy. This endorsement adds a separate insuring agreement that covers the cost to repair or replace faulty workmanship, including the use of defective materials. Damages associated with the loss of use of tangible property are also included.

## NFP MARKET EXPERTISE

NFP construction experts are here to help you build. We capitalize on our exceptional and longstanding insurance company relationships to our clients' benefit, especially as the market continues to evolve.

Look forward to more from NFP's series on the changing insurance market for construction . This series will focus on developments and challenges in the rapidly changing insurance market, and their impacts to the construction industry, including contractors, designers and owners/developers.

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