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Navigating Earth Movement Sublimits

Colorado builders could be vulnerable to significant financial losses

IN THE WORLD of construction, unforeseen challenges often arise, and builders rely on their insurance policies to mitigate risks. One potential pitfall of which Colorado builders should be aware is the limitation of coverage for earth movement in some commercial general liability (CGL) insurance policies. Earth movement sublimits, often buried within insurance policies or their exclusions, can leave builders vulnerable to significant financial losses, especially in situations where a number of homes experience differential movement.

As the name implies, earth movement sublimits are specific provisions within CGL policies that limit coverage for damages caused by various forms of ground shifting, including subsidence, settlement, or heave. While CGL policies typically provide broad coverage for property damage and bodily injury, these sublimits carve out exceptions for earth movement-related losses. Builders may not realize the implications of these sublimits until they face a situation where multiple homes experience differential movement during the same policy years, leading to expensive costs of repair and litigation.

This issue is further complicated because of the manner in which Colorado treats construction defect cases. In Colorado, construction defect cases are considered ongoing and progressive losses, meaning that all policies in place from the time of closing through the time a claim is brought share equally in the claim. For example, if a homeowner files a lawsuit five years after closing, 20% of the claim will be allocated equally to the policy in place for each of those five years. In a typical situation, each of those policies would carry limits of $1 million per occurrence and $2 million in the aggregate. This means that for claims which may be made during that period, the builder would have limits of between $5 million per occurrence or $10 million in the aggregate.

If the policies in place over this period had earth movement sublimits of $100,000 per policy, the builder would only have $500,000 total coverage to protect against cases involving expansive soils. This creates the potential for a very large, uncovered exposure for the builder. If the homeowner has named the builder individually as a defendant, pursuant to Hoang v. Arbess, he or she might be personally liable for the shortfall in insurance.

To mitigate these risks, builders wanting to prevent the potential for such uncovered exposures should consider avoiding policies with earth movement sublimits or purchasing project-specific insurance policies tailored to the unique exposures of a project. Unlike standard CGL policies, project-specific insurance can be customized to provide broader coverage for specific risks associated with a particular construction project. For builders working in subdivisions with potential expansive soils risks, project-specific insurance can offer enhanced protection against earth movement-related losses, ensuring that they have adequate coverage in the event of construction defects or structural failures.

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Builders in Colorado must be vigilant about the limitations of their insurance coverage, particularly when it comes to earth movement sublimits. By understanding the implications of these sublimits and exploring alternative insurance options, like project-specific policies, builders can better protect themselves against uncovered exposures and mitigate the financial risks associated with construction defects in areas with the potential for soil movement.

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