

# How Do Builder's Risk Claims Differ from Property Damage Claims?

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## Introduction

Some questions that often arise when a claim occurs on a property being constructed are:

- Why is this a Builder's Risk claim?
- What makes it different than a Property Damage claim?
- Are there different "risks" associated with a Builder's Risk claim?

While there are some similarities between Builder's Risk and Property Damage claims, there are also numerous differences in the way they are managed and evaluated. Below are some of the key differences between Property Damage and Builder's Risk claims that are important to understand.

## Initial Site Inspection: Damaged Areas Versus Un-Damaged Areas

Consultants conducting an initial site visit, whether it be for a Property Damage claim or a Builder's Risk claim, make a concerted effort to capture the extent of damage created by the loss event. However, while some folks are typically focused on the portion of the site that was damaged, Builder's Risk experts are equally concerned about what *wasn't* damaged. Builder's Risk experts need to understand the status of the entire project at the time of the loss, not just the damaged areas, in an effort to be able to assess any potential delay claims.

Initial documentation of what was not damaged by the loss can be extremely valuable in evaluating where the project was at the time of the loss, whether the Contractor was on track to meet project completion milestones, and what work could continue unimpacted by the loss. It also proves valuable during review of the direct repair cost claim to ensure time and material costs submitted with a claim encompass only the repair work and not work that was simply incomplete at the time of the loss.

## Project Documentation – Why Is It Needed?

For typical property damage claims, consultants may utilize the Request for Information (RFI) process to request various supporting documentation from the Insured to assist in supporting all costs incurred due to a loss event.

For Builder's Risk claims, the Insured can become overwhelmed when they see the volume of project documents a Builder's Risk expert requests as part of the RFI process. However, the documentation being requested includes documents that the Insured or its General Contractor already have on file as part of the normal course of construction. Site inspection photos, progress photos, contracts, daily reports, meeting minutes, monthly reports, payment applications, and schedules-both for the period

prior to and after the loss-are all critical puzzle pieces that Builder's Risk experts use to recreate the history of the project and ascertain where the project was at the time of the loss, where it was heading, and how it was impacted by the loss. It is critical that these documents be received as early in the claim process as possible. Not only do they prove valuable in the evaluation of direct repair costs, they also prove valuable in the evaluation of delay claims.

If the project repairs are to be conducted on a time and material basis, it is also valuable to have a site monitor document the progress of repairs; the manpower, equipment, and materials utilized; and any other non-loss factors that are impacting the completion of repairs.

## Builders Risk Is Typically Bound by Contract Terms

In Property Damage claims, the scope of repair needs to be defined and agreed upon between the Insured and the Adjustment team. Property Damage experts utilize estimating software such as Xactimate, RS Means, or Marshall Swift to estimate the cost of repair for the agreed upon scope. They may also look to the local construction market to obtain pricing for an estimate. Markups of an allowable percentage for overhead and profit are typically applied to the estimated repair costs.

Builder's Risk claims differ from this in that the scope of the project is already defined by the project contract drawings, specifications, and subcontract scopes of work. In addition, the cost of the repair is bound to the terms of the executed construction contracts and subcontracts in place for the project. These executed contracts and subcontracts often include previously agreed to unit pricing for material, equipment rates, and labor rates. The contracts will also define the applicable wage rates for the project (union, non-union, prevailing wage). The contracts will define the markups for overhead, profit, insurance, and bonds (if bonds are required), and often differentiate markups applied to self-performed work versus subcontracted work. The contract will also define which party is responsible for holding the Builder's Risk policy (Owner or General Contractor) and if other Builder's Risk policies are in place for the project which may impact the claim.

Builder's Risk claims may also require an analysis of site logistics for the repair and to determine if the level of effort required to complete the repairs varies materially from the effort required for original installation. For example, site logistics may have changed since the original installation and now require the repairs be completed in a sequence different from what was originally procured from the subcontractor. Consider an instance where a structural steel contractor originally erected the steel prior to enclosure of the building. Once enclosure is complete, access to perform repairs may now require a new approach for access.

## Estimating Versus Claim Review Process

Property Damage consultants typically submit an estimate following their site inspection. Values for the repair work may be in either Replacement Cost Value (RCV), Actual Cash Value (ACV), or both. Once the

repairs are complete, the Insured needs to demonstrate their actual costs incurred (less any upgrades or code required upgrades) to receive the total Replacement Value. To facilitate this process, costs are often categorized at the request of the Carrier depending on the coverage applied (i.e. repair costs, code upgrades, non-code upgrades, equipment, contents, etc.).

For Builder's Risk claims, an estimate may not be required. Instead of agreeing to costs prior to starting repairs, the Insured, often in conjunction with their General Contractor (depending on who holds the Builders Risk policy), proceeds with repairs in accordance with their contract and then submits a claim with proposals, receipts, and/or time and material tickets to support their claim. The claim is then reviewed in detail against all project documentation received during the RFI process (contracts, meeting minutes, schedules, payment application, etc.) to certify the verity of the claimed amount. After which, any elements that require further clarification or backup to support the claimed amount on a detailed claim analysis document would be identified and shared with the Insured for action.

The consultant then meets with the Insured and General Contractor to review the claim analysis in detail to resolve any items that need clarification or additional backup from the Insured. This process may take several iterations, especially if claim backup documentation is submitted in part while the repairs are underway. Once all repairs have been completed and the costs have been clarified, the consultant submits their cost recommendation to the Carrier, with costs often categorized depending on the coverage applied (i.e. demolition costs, direct repair costs, engineering/design costs, etc.), so that the Carrier can reach a final settlement with the Insured. If repairs span several months, the Carrier may agree to make interim partial payments to the Insured during the repair period in accordance with the claim amounts recommended by the consultant, based on supporting documentation received to date.

## Delay Versus Business Interruption

Both Property Damage and Builder's Risk claims may have a Business Interruption (BI) component. With Property Damage claims, the Business Interruption is typically based on how long the facility was out of commission due to repairs. For these claims, a Forensic Accounting expert analyzes the financial information submitted by the Insured to ascertain the amount of Business Interruption. For example, how long was the manufacturing facility shut down due to the collapsed roof? Often the period of Business Interruption aligns with the period of repair, the number of days between the loss, and the completion of repairs.

In Builder's Risk claims, the Business Interruption component may be due to an Insured being unable to use the facility for its intended revenue-generating purpose. In these claims, a Forensic Accounting expert analyzes the financial information submitted by the Insured to ascertain the BI, very similar to a Property Damage claim. However, Builder's Risk claims often also have a Delay component, which Property Damage claims do not have.

When there is a Delay component to a claim, which is an inherent risk for Builder's Risk claims, the Builder's Risk expert needs to determine how construction progress and the overall project's substantial completion were impacted by the loss. They review the pre-loss schedules, site inspection photos, daily logs, and other project documentation to determine when the project was scheduled to finish and when it would have finished had the loss not occurred. In this review they may find the project was already delayed due to factors unrelated to the loss prior to the loss occurring. For example, the project was not on track to meet its substantial completion milestone due to a pending design issue that was holding up completion of the lobby which is necessary for egress in order to achieve occupancy. This is when those detailed site inspection photos documenting the status of the entire project at the time of loss really prove useful.

Builder's Risk experts also review the post-loss schedules and other project documentation to determine when the project will finish as a result of the loss and whether there are other events impacting the project that are not related to the loss. For example, that lobby design issue still hasn't been resolved and will hold up occupancy even after the repairs are completed. From this we can ascertain the period of repair and the true period of delay, which may or may not align with the period of repair. This period of delay is then utilized to determine appropriate time-related costs and/or extended general conditions attributable to the loss. It may also be used by Forensic Accountants to ascertain appropriate construction loan interest, loss of rent, and other Soft Costs attributable to the loss. Project contracts may also include Liquidated Damage or Completion Bonus clauses that must be considered in the delay claim.

## Conclusion

While Builder's Risk claims have some similarities to Property Damage claims, there are many differences in how they are documented and handled. Due to these differences, it is important to engage a Builder's Risk expert as early as possible to assist with the initial site inspection, project documentation review, cost claim evaluation, and any potential delay issues.

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