

SPECIAL Report



NATIONAL ROOFING CONTRACTORS ASSOCIATION

January 2004

Dear Member:

In 2004 CNA is implementing significant changes to the NRCA/CNA Group Safety Program primarily due to the enormous and continuing losses associated with construction defects claims. The most important of these changes pertains to construction projects involving building with "human residency," including but not limited to single family homes, apartment buildings and condominiums. Another significant change will be new criteria for the use of torches.

This report provides a summary of these changes, along with some background information on why they are occurring. The ultimate remedy for the situation is to limit the ability of plaintiff's attorneys to bring suits that are mostly without merit, and the only way to do that is through a concerted lobbying effort. NRCA has joined with many other construction industry and general business organizations for just that purpose, and we will be communicating with all of our members further asking for your help.

Construction Defects

Beginning in the early 1990s, attorneys in California began bringing suit against contractors involved in condominium projects. In California, there is a 10-year statute of repose for construction defect claims, which allows home and building owners to seek damages for up to 10 years after the completion of a construction project. Typically, the attorneys would meet with the condominium association's board of directors, and offer to hire a construction expert to find defects at the attorney's expense. The attorney would then, typically, sue the general contractor and/or developer, who would in turn sue all of the subcontractors. Under this scenario, CNA alone has paid out more than \$900 million in construction defect losses, just in California, in the last 10 years.

Construction defect claims are on the rise in other states, most notably Colorado, Arizona, Nevada, Texas and Florida. In addition to condominiums, attorneys have begun targeting apartment buildings and single family homes.

The average construction defect claim by CNA for its roofing contractor policyholders has increased steadily, and is now about \$70,000 – regardless of whether the roof was defective in the first place. Much of this falls within the defense cost category.

Accordingly, CNA has made the decision to change its underwriting strategy and requirements to limit exposure to these types of claims.

Effective January 1, 2004, contractors whose residential work exceeds 10 percent of annual sales will no longer be eligible for general liability or umbrella coverage (although they may still be eligible for other lines of coverage). In addition, all roofing general liability and umbrella policies will see residential exclusions being attached.

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Initially, an existing form will apply that excludes work on multi-family owned units, tract housing and condominiums. Beginning May 1, 2004, and subject to state approvals, a broader exclusion will apply that extends to single family homes, apartments, dormitories, military housing, nursing homes and assisted living facilities. This exclusion will also apply to residential service work.

Torch Use

The NRCA/CNA Group Safety Program has recently experienced a number of significant losses from the use of torches on roofs. Effective May 1, 2004, you will see new restrictions intended to control this exposure.

As a general underwriting guideline, contractors who use torches on work that accounts for more than 25 percent of their annual sales will no longer be eligible for general liability or umbrella coverage. In addition, language will be added to all policies excluding coverage for fires caused by the application of torches directly to any combustible substrate or surface and torch work that does not comply with industry best practice guidelines. You will receive copies of these best practices shortly.

Part of the best practices will require that all torch applicators be certified in the proper use of a torch. The certification program has not been finalized, but will be offered by NRCA, and most likely delivered through state, local and regional associations who have an interest in doing so. Commitment within a 60 day time period will be required for May 1 renewals.

Other Developments

CNA and NRCA have been working diligently to attempt to find reasonable insurance solutions for the many members who are, or will be, facing a difficult insurance market. We hope to have important news to announce in the very near future.

In the meantime, it is important for any roofing contractor to begin working with his or her agent or broker at the earliest opportunity. And as always, feel free to contact NRCA with your questions, comments and concerns.

This is a very difficult time for our partners at CNA, as you can well imagine, and it will be a very difficult time for many of our members. Please let us hear from you. Tell us your own experiences and let us know whenever we can be of help.

Sincerely,



William A. Good, CAF
Executive Vice President