

It's a Mod Mod World: Insurance Risks for Modular Construction

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Modular construction was once a novel approach—think the Disney Contemporary Resort in Orlando, built in 1971. Today, using prefabricated elements in construction projects is commonplace and growing rapidly, accounting for more than 6% of all new construction in North America in 2022.

The controlled plant conditions of prefabrication boast numerous advantages over traditional delivery methods, including higher quality; safer work environments; increased productivity; and decreased weather delays, supply chain issues, and coordination of trades. These advantages improve your bottom line and decrease the potential of a third-party claim.

But the benefits of this trendy delivery method come with new risk management challenges. To ensure your project has sufficient coverage, consider:

Offsite Work: Offsite work is generally not covered by traditional insurance policies. For example, a typical builder's risk policy covers "direct physical loss of or coverage to Covered Property from any Covered Cause of Loss." If the "Covered Property" includes only the project site, the policy may not cover modular components that are damaged at the manufacturing facility or during transport.

Similarly, wrap-up CGL policies typically extend only to work on or near the construction site. Modification to the standard policy language is necessary to ensure coverage for offsite activities. And if construction of the modular components is comingled with manufacturing operations for multiple projects, it may be impossible to isolate the covered property for purposes of insurance coverage.

Transportation: Modular construction also carries additional risks involving transportation, because entire portions of the finished product are shipped as a unit. Without sufficient coverage during transport, a loss could be catastrophic. Modular construction also leads to increased use of cranes at the project site, which may affect an insurer's willingness to cover the work or the premium charged.

Policy Exclusions: Prefabricated construction may also make certain policy exclusions more prevalent. For example, it is an open question whether modular components are a "good" or a "service"—if they are the former it may implicate a CGL policy's "your product" or "product recall" exclusions in the event of a product defect. This delivery method also blurs the line between design and construction services, so a CGL insurer may be more inclined to argue that a product defect is the result of uncovered professional services.

Four Best Practices to Reduce the Risk of Uncovered Claims:

1. **Engage your broker** regarding projects involving modular components, which may affect coverage for increased transportation and crane usage.
2. **Extend coverage locations** to the extent possible for ongoing operations to the area where the components are being assembled as well as during transport.
3. **Engage the manufacturer** to ensure it has sufficient insurance coverage for damage to the components themselves as well as for potential third-party claims, and that the contractor is named as an additional insured.
4. **Get specific** by considering insurance products that are specific to modular construction.