

improperly detailed and constructed and the roof leaks, then the roof will typically leak into more than one unit, etc. etc.

Additionally, many Developers and/or their legal counsel, have a loose understanding of exactly who and what services are covered by the Wrap policies, often claiming that “the Architect is covered.” Such statements are not only misleading, but dangerous as the Architect is then led to believe that, because they are “covered” by the Wrap policy, they do not need to concentrate on negotiating the terms and conditions of their contracts.

### **What Is A Wrap Policy, And Who And What Are Covered?**

Wrap policies are purchased by the Developer and are similar to a Project Policy (discussed below) in that the policy provides coverage for the General Contractor and all the subcontractors who are enrolled in the policy. However, this is General Liability coverage, not Professional Liability coverage. *Under the Wrap policy, professional liability coverage is excluded.* In other words, if the Homeowner’s Association or individual homeowners claim that damages arose out of, among other things, the negligent errors and omissions of the Architect, then the Architect would not be covered by the Wrap policy.

Apparently, a couple of insurance companies are willing to delete the professional liability exclusion, for a price, but deletion of the professional liability exclusion merely results in the coverage of Bodily Injury and Property Damage claims only, and not coverage for the typical allegations of design deficiencies which are the most important exposures for a design professional. In other words, the Architect’s inclusion in the typical construction defect claim would not be covered by the Wrap Policy if the claims merely related to the Architect’s alleged negligence, yet there was no property damage or bodily injury claims included.

Although these Wrap policies really do not benefit the Architect from an errors and omissions coverage standpoint, the advent of such policies has, at the very least, forced the Developers into being more proactive. The Wrap policy has evolved rapidly over the past few years to fill the void in General Liability coverage available for multi-family residential projects. Due to Construction Defect litigation, most commercial insurers ceased offering general liability coverage to contractors who worked on these projects. In order for the Developer to hire qualified contractors, it became necessary to develop a new paradigm of coverage. The insurance industry has done a fairly good job of making coverage available, although it is very expensive.

Many steps of underwriting are now included in the process before a Wrap policy can be placed, and the steps are designed to help prevent or at least mitigate litigation. For example, Developers must submit soils reports; they can use only certain types and applications of the popular EIFS; they must have an acceptable quality assurance program in place; they must use an on-going site inspector who identifies potential problems during construction and corrects them; have a home warranty program and must include certain maintenance requirements in the CC&Rs of the homeowners