

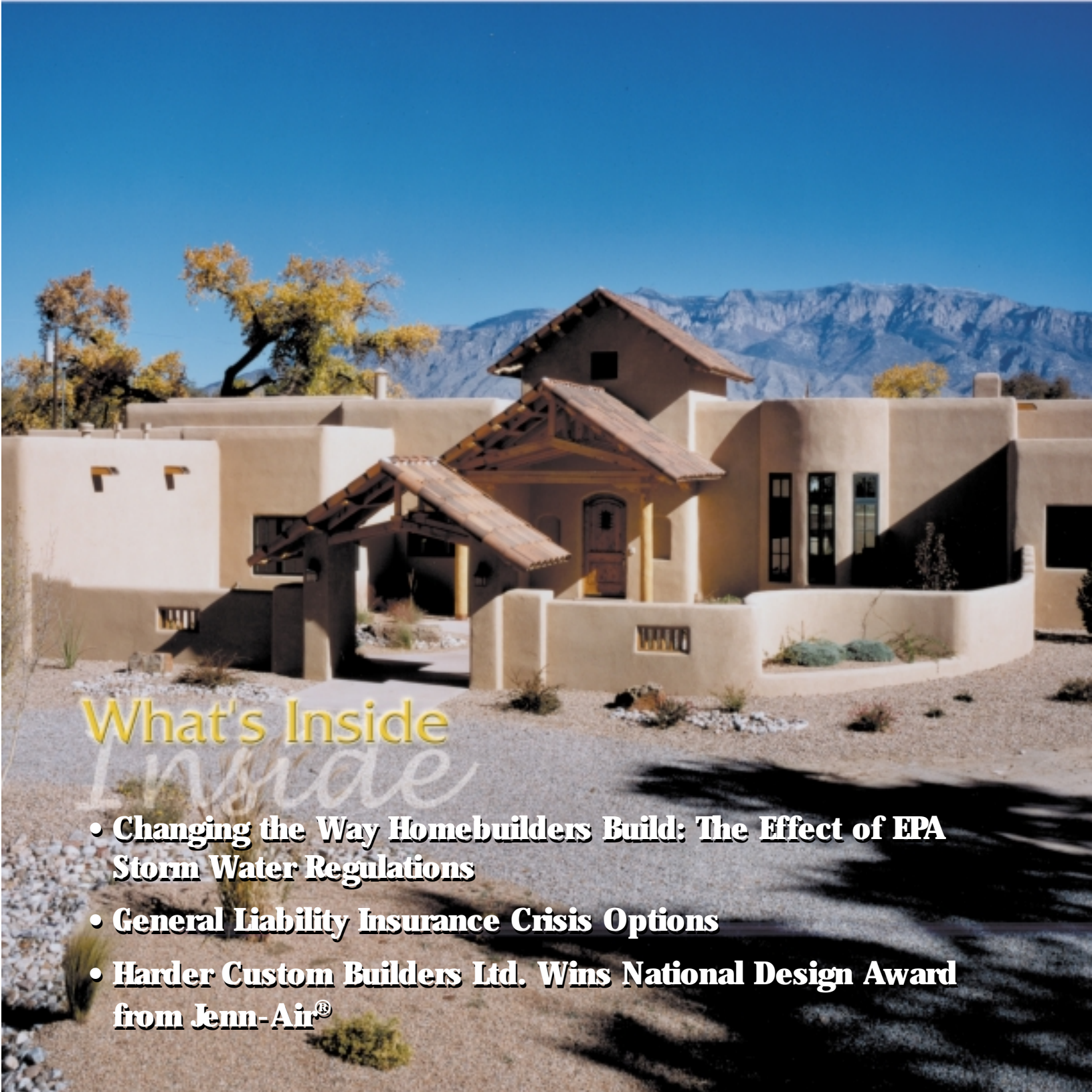


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GENERAL LIABILITY INSURANCE CRISIS OPTIONS

By Peter Merrill

As every builder and remodeler knows, the market for general liability insurance has taken a disastrous turn over the past two years. Builders/remodelers in every part of the country are experiencing dramatic increases in premiums and big changes in deductibles and exclusions. In some states, coverage may not be available at any price. Without business insurance, you're basically out of business. If your insurance is too costly, you can't be competitive.

In discussions with the general liability insurance carriers, their main reason for their actions is the high cost of litigation relating to claims by homeowners against general contractors. In past years, insurance companies invested your premiums in the stock market or in other investments and realized a profit. Even when

there were high litigation costs there was an overall profit to be made off of the construction industry. Now, even with higher premiums and expanded exclusions, insurance companies are finding it difficult to make a profit on this industry; hence, the need to drop the construction insurance market from their potential profit centers.

The National Association of Home Builders (NAHB) has recognized this "general liability insurance crisis" as the biggest problem facing the residential construction industry today. As a result, NAHB is promoting different suggestions for contractors to help lessen the effect of the insurance crisis and to help mitigate future claims and keep the cost of construction litigation to a minimum.

First, NAHB has begun a cooperative initiative with Marsh, a global insurance consulting firm, to develop a range of GLI coverage options for builders, remodelers and subcontractors that would be available to contractors in every state at a more reasonable price.

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Second, NAHB has developed a model "Right-to-Repair" legislation to be adopted in every state. This legislation basically stipulates that a homeowner must give a contractor the right to correct any construction defects or other construction irregularity before the homeowner can begin litigation against the contractor. Many states also require mandatory mediation or arbitration as an alternate dispute resolution mechanism to civil litigation. As of my writing this article, 24 states have already adopted some form of "Right-to-Cure" or "Right-to-Repair" legislation and 7 other states are working on legislation to introduce to their state legislatures for adoption.

Third, NAHB has developed a set of "Residential Construction Performance Guidelines" (RCPG) that address non-code, mostly cosmetic issues in building or remodeling. The second edition of the guidelines is now available and they are currently being revised. The new revised edition should be available in 2005. If you reference the RCPG in your construction contract as the first step and a dispute develops, very often the guidelines will settle the disputed items as to what is "acceptable" construction standards and you will not need to proceed with other dispute resolution procedures. According to the construction contract, either the homeowner will have to accept the guidelines as the acceptable construction standards or the contractor will have to bring the work performed up to the standards specified in the RCPG. It is important to recognize the guidelines were not developed to protect just the contractor, but also to protect the homeowner from sub-standard construction. I serve on the NAHB work group that is updating the guidelines. Several contractors related numerous examples of how, by referencing the RCPG in their contracts, they are settling many minor disputes without further litigation or alternative dispute resolution.

Fourth, it is recommended that contractors stipulate mediation and/or arbitration in their construction contracts that will preclude the homeowner from pursuing civil litigation, which generally costs more and is more time consuming than mediation or arbitration. Because more than 90% of court cases are settled by mediation before they actually go to trial, this type of facilitated negotiation is recognized as the most successful alternate dispute resolution process. Many judges are ordering mediation after a construction case has been filed within their jurisdiction, prior to actual court proceedings.


Solving the insurance crisis is critical to every member of NMHBA. This article was written to make you aware of the crisis and give you an overview of steps you may take


to protect yourself from this terrible predicament. Each of us must do our part to lessen the construction litigation problems we face today. Look to future issues of the Housing Journal for further in-depth discussion of the remedies mentioned here.

Peter Merrill is a past president of NMHBA, and a Certified Kitchen Designer. He is also the president of Construction Dispute Resolution Services, a company that specializes in mediation and arbitration for the construction industry. He is a member of the National Kitchen and Bath Association's Legislative Committee. He serves as a National Director of the National Association of Home Builders and is a member of the NAHB Construction, Codes and Standards Committee and several Construction & Codes Subcommittees. For more information about the benefits of mediation or arbitration, you can check his website: www.mediate.com/cdrsnm.



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