Insurance

Protecting the Association & Board of Directors

MULCAHY
Community Association Cheat Sheet©

Bringing Answers to Community Associations

This publication discusses significant points of law as they apply to community associations and is not intended to offer specific legal advice or responses to individual circumstances or problems.

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Insurance Overview

Protecting the community association and board of directors requires a close look at insurance coverage and risk to prevent the coverage gaps that only become obvious after a loss or lawsuit and there is no payout.

Insurance Coverage for Community Associations

***Directors and Officers Liability Coverage (D&O)*:** Typically covers the board of directors. Common claims include the board's failure to adhere to the governing documents, challenges regarding power granted by the bylaws, challenges to assessments, breach of fiduciary duty, architectural variances, fair housing discrimination and the like. Choose a policy that includes indemnity coverage for the cost of defending actions against the association and specifies that the coverage limit does not include the defense costs; otherwise, legal expenses could eat up most of the coverage.

Property Insurance: Property damage claims are more common than D & O claims. It is not uncommon for boards to set insured loss caps intentionally too low to reduce their premiums, but it is also because boards may not know the value of their community. "Guaranteed replacement cost" coverage is hard to find today. However, most policies do include an automatic inflation adjustment provision, which increases the policy limits annually to reflect increases in area building costs. Boards should have the community periodically appraised and reviewed to be sure the association's policy includes the inflation trigger and that the cost benchmarks the insurer uses are reasonable. Be sure to add coverage for any additions or improvements made after the existing policy was issued.

Fidelity Insurance: Fidelity insurance should be issued in the association's name with the property manager obligated under the association's policy. By structuring in this manner, the insurance will cover a theft by the management company principals as well as by the property manager. The management company will have its own insurance, but that will typically cover the property manager only – it will not cover a theft perpetrated by the management company's owners.

How Much is Enough

Check association documents to ensure that the association has the required coverage. Additionally, consult with your insurance agent, manager and attorney to determine how much insurance is enough.

Shopping for Insurance

The board should identify and evaluate basic needs, issue a request for proposals and may want to have an insurance adviser evaluate the bids received. An adviser can explain the similarities and differences, while comparing the costs and coverage offered. Alternatively, choose an insurance agent who specializes in the coverage needed. Note: a good insurance agent should walk the grounds to determine coverage needed and should be willing to meet with the board face-to-face to discuss any risks and coverage issues. This is particularly important for associations, because condominium insurance is complicated and unique and a master planned community may have many, and varied common area amenities. It is important to find an agent who can analyze a condominium association's coverage and make sure it dovetails properly with a unit owners' policy, as well as assess the coverage needed for a master planned community.

The association should not treat insurance like a commodity, and shop for it based almost entirely on price without considering the nuances that may make one policy, even if somewhat more expensive, a more cost-effective choice than another. It is important to remember that not all policies nor insurers are equal.

Problem Areas

Insurance coverage to watch closely:

Deductibles / Claims: Associations should consult with their attorney when making claims (to determine if the claim is an association issue or an owner issue) and payment of deductible. Who pays the deductible should be evaluated on a case by case basis.

Non-hired Auto Coverage: Assume that a board member conducting association business accidentally kills someone in an automobile accident. If his/her personal coverage is not adequate to cover the claim, the victim's family can sue the association for the balance. A community association can obtain coverage for this risk.

Workers' Compensation: Many boards overlook this coverage, assuming they only need it if the community employs workers directly, but associations without anyone on their payroll may still be vulnerable to claims. For example, an employee of a contractor hired by the association is injured while doing work for the community. If the contractor does not have the appropriate coverage, the laws in many states will make the community liable for the worker's medical expenses.

Insurance Tips

- Know the contract dates for the association's insurance policies and assure that they are renewed on time.
- Read the master policy and insurance provisions in the association's CC&Rs to ascertain coverage and protection with regard to community needs.
- Research to determine if your insurer is on solid financial ground and will be there when you need them.
- Be proactive about risk management. The best way to reduce premium costs is to limit the number of claims filed. Limit claims by being aware, following Arizona community association laws, identifying risks and reducing risk where possible. Seek the advice of the association's attorney and insurance agent with regard to making claims.
- Eliminate and control possible risks through monthly property inspections, proper maintenance, employee training and resident education. The board of directors should follow the governing documents, state laws and use open business like procedures in board and committee meetings.
- Even with insurance coverage in place, be proactive. Shop the community's insurance periodically if, 1) there are changes in exposure to risk; and 2) to compare the coverage available. However, if you like the service the current insurer provides, switching to save a few dollars may be a bad idea.
- Decide what you need first, then compare prices for the same coverage.
- When changing carriers and/or agents, ask the agent to certify new policy coverage in writing. The statement should include an apples-to-apples comparison, listing the coverage from the old policy, the new coverage and any coverage from the old not provided in the new policy.
- Establish claims management procedures and follow them.
- For condominium owners: Educate owners regarding the necessity for individual unit-owners' policies, and consider adopting a CC&R amendment requiring owners to demonstrate coverage.
- Insurance Information Institute, www.iii.org, educates to improve public understanding of insurance.
- Arizona Department of Insurance, www.id.state.az.us/index.html, gives specific information about state insurance laws to protect consumers.
- When an association receives notice that an insurance policy is not being renewed, the association needs to act promptly (contact the association's attorney to obtain assistance on securing a new insurance policy).

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