

A row of ten matches is positioned at the bottom of the frame. The first match on the left is lit, with a bright yellow and orange flame rising from its tip. The other nine matches are unlit. The background is a solid, dark red color. The text 'Insurance Hot Topics' is centered in the upper half, and 'Beyond Fire & Flood' is centered below it. A small number '1' is located at the bottom right corner.

Insurance Hot Topics

Beyond Fire & Flood

Moderators



Ron Bridge

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Weaver Bros. Insurance



Phil Simmerer

Principal Agent

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Panelist



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*Stakeholder
Rees Broome*



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*Regional Manager
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*Senior Community
Manager
Tidewater*

Special Thanks!



Beth Bencivenni

Rescon Restoration and Construction

Hot Topics

1. State of the Market Place 2020
2. What are the most frequent types of claims other than property damage claims?
3. How do communities avoid and/or deal with frivolous claims?
4. Common types of employment or discrimination (emotional support animals) claims/how can Boards avoid them?
5. Common types of D & O claims/how can Board's avoid them?
6. Common Fair Housing claims/how can Board's avoid them?
7. Non-employee workers comp claims
8. Claims relating to host liquor licenses/Off duty armed police officers
9. Claims relating to Social media/drones/air B&B's, etc.
10. Any claims for hostile living environment?
11. Typical gaps in Association coverage
12. What can communities do to prevent insurance claims?
13. Lack of knowledge and information about HO-6 policies
14. What is the standard process for a claim that is not a claim involving environmental issue?
15. Environmental/mold claims

1. State of the Market Place 2020

Starting in 2019 expected rate increases were 3%-7%

Actual increases were 5% to 20%

Clients with claim activity had increases of 10%+

Renewals show increase deductibles by some carriers

Per unit deductibles. Water/Wind deductibles will be more frequent

Some carriers offering percentage deductibles

Some carriers pulled out of condominium marketplace

Continued rate increases for accounts with claim frequency

Best rates will continue to be possible for clean, clean communities

CAT Claims


Increased Cost of Construction = ITV

2. What are the most frequent types of non-property damage claims?

- Slip & Falls – Weather related
- Slip & Falls – Facility defects related
- Environmental
- Falling Debris - Trees & Fences Falling
- Snow Removal – Attractive Nuisance
- Employee Dishonesty



3. How do communities avoid and/or deal with frivolous claims?



Frivolous lawsuits are booming in this county. The U.S. has more costs of litigation per person than any other industrialized nation in the world, and it is crippling our economy.

— Jack Kingston —

AZ QUOTES

3. How do communities avoid and/or deal with frivolous claims?



COMMUNICATION
HAVING CLEAR
CHANNELS FOR
RESIDENTS TO
CONTACT



BEING
RESPONSIVE TO
RESIDENTS



ENCOURAGING &
WELCOMING
COMMUNITY
MEMBERS



SOCIAL MEDIA
CONTROLS



CAI CIVILITY
PLEDGE & CAI
RIGHTS

4. Common types of employment or discrimination claims

- Age
- Disability
- Race/National Origin
- Gender/Sex
- Religion
- Sexual Harassment/Orientation
- Equal Pay
- Pregnancy

4. Common types of employment or discrimination claims



Use professionals



Follow the rules



Keep by-laws current



Elect qualified board members



Do not allow emotions and personalities to get in the way



Keep good records



Forward demands and claims

4. Common types of employment or discrimination claims

Documentation from the Internet

Some websites sell certificates, registrations, and licensing documents for assistance animals to anyone who answers certain questions or participates in a short interview and pays a fee. Under the Fair Housing Act, a housing provider may request reliable documentation when an individual requesting a reasonable accommodation has a disability and disability-related need for an accommodation that are not obvious or otherwise known. In HUD's experience, such documentation from the internet is not, by itself, sufficient to reliably establish that an individual has a non-observable disability or disability-related need for an assistance animal. By contrast, many legitimate, licensed health care professionals deliver services remotely, including over the internet. One reliable form of documentation is a note from a person's health care professional that confirms a person's disability and/or need for an animal when the provider has personal knowledge of the individual.

From HUD - Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act

The Official US Service Animal & Support Animal (ESA) Registry



Emotional Support Animal
[Click Here to Register](#)



Service Animal
[Click Here to Register](#)



[Click For Doctor's Letter for Airlines & Housing](#)

Potential Insurance Claim Scenario # 1



5. Common types of D&O claims

- Failure to adhere to by-laws
- Failure to properly notice elections
- Failure to properly count votes/proxies
- Challenges by members regarding power granted the Board by by-laws
- Improper removal of Board Members
- Decisions resulting in physical damage to the association's property
- Challenges to assessments
- Approval of variances, generally by an architecture committee
- Breach of fiduciary duty
- Challenges to decisions of the Architectural Review Board
- Questions or challenges regarding easements
- Failure to maintain common areas
- Failure to properly disburse funds (i.e. insurance proceeds)
- Defamation by the Board of a member

5. Common types of D&O claims

- The devil is the details - If you ignore the devil, it is likely to come back to haunt the Association later. Failure to Follow the By-Laws.
- Out of Sight Out of Mind - Failure to Update or Memorialize Amendments.
- Penny Wise and Pound Foolish - Failure to hire the Critical Professionals
- Ignorance is Bliss - Failure to know and Follow New Laws
- We'll get to it later - Failure to Document and Keep Records
- It's the Principle of the Matter - Failure to put Emotions and Personalities aside.

5. Not all directors and officer's liability policies are created equal

Things to consider:

- Does the definition of insured extend beyond the actual directors and officers?
- Does the definition of insured protect past, present, and future directors?
- Does the definition of insured include committee members or volunteers?
- Does the definition of insured include employees?
- Does the policy cover the spouse of directors and officers?
- Does the policy provide a defense to claims and lawsuits (as opposed to just reimbursing for such costs)?
- Does the policy cover libel and slander?
- Does the policy defend claims seeking non-monetary loss?
- Does the policy cover wrongful termination or other employer liability claims?
- Does the policy cover discrimination?
- Does the policy defend you where there is a claim or lawsuit for failure to maintain or obtain adequate insurance?
- Does your policy provide coverage for your property manager?
- Are you protected for the decisions you make in accepting or rejecting contracts?
- Are you protected if there is a claim that you denied someone approval of a building plan because of race, religion, or other basis?
- Does the insurer provide the association with risk management advice?

7. Non-employee workers comp claims

Mistake #1: Underestimating risks associated with employees of contractors and vendors

Mistake #2: Assuming your management company's coverage protects you

Mistake #3: Your HOA has workers' comp insurance, but it does cover volunteers

7. Non-employee workers comp claims

- Workers Compensation is insurance that pays when a worker is injured while performing a job.
- A Community Association could be held partially or totally liable for damages if it hires a company without Workers Compensation and someone is injured.
- Always obtain up to date certificates of insurance from every contractor naming the community association as additional insured.
- Can also protect volunteers
- The cost for a policy with no employee is approximately \$350/year.
- Document that you provided this information to the board, eliminate your professional liability.



8. Claims relating to host liquor licenses/Off duty armed police officers

- When community common areas are used by residents or guests for planned gatherings or events it is not uncommon to have alcohol served and/or security on site.
- If the community allows these activities in the by laws, it is important to have a written alcohol policy prohibiting distribution of any kind. A strict bring your own alcohol policy is necessary to reduce the risk of litigation brought against the community association.
- One way to transfer the risk from the association is to require a Special Event Insurance Policy with Liquor Liability included for the planned gathering.

9. Claims relating to social media

- Social Media: Libel, Slander, and Defamation of Character claims are not uncommon and arise frequently from Social Media occurrences. The coverage the Board of Directors needs to ensure they are protected from Personal Liability Claims of that nature is the Commercial Umbrella Excess Liability Policy.
- Remind homeowners that home buyers real estate agents look at Social Media when they are researching a neighborhood. Negative things on Social Media lowers home values.



Image – pbs.com

9. Claims relating to airbnb's, drones, etc.

- Air B&B's: While Air B&B is new, rental properties are not new. Insurance companies are treating Air B&B rentals no different than other types of rental situations.
 - For condominiums the carrier for the association master policy will continue to ask about the number of units rented out.
 - For Homeowners Associations there isn't likely to be any change to the coverage or application for the Master Policy.
- Homeowners and Condo Unit Owners need to be most concerned is with whether they have the correct type of personal insurance policy.

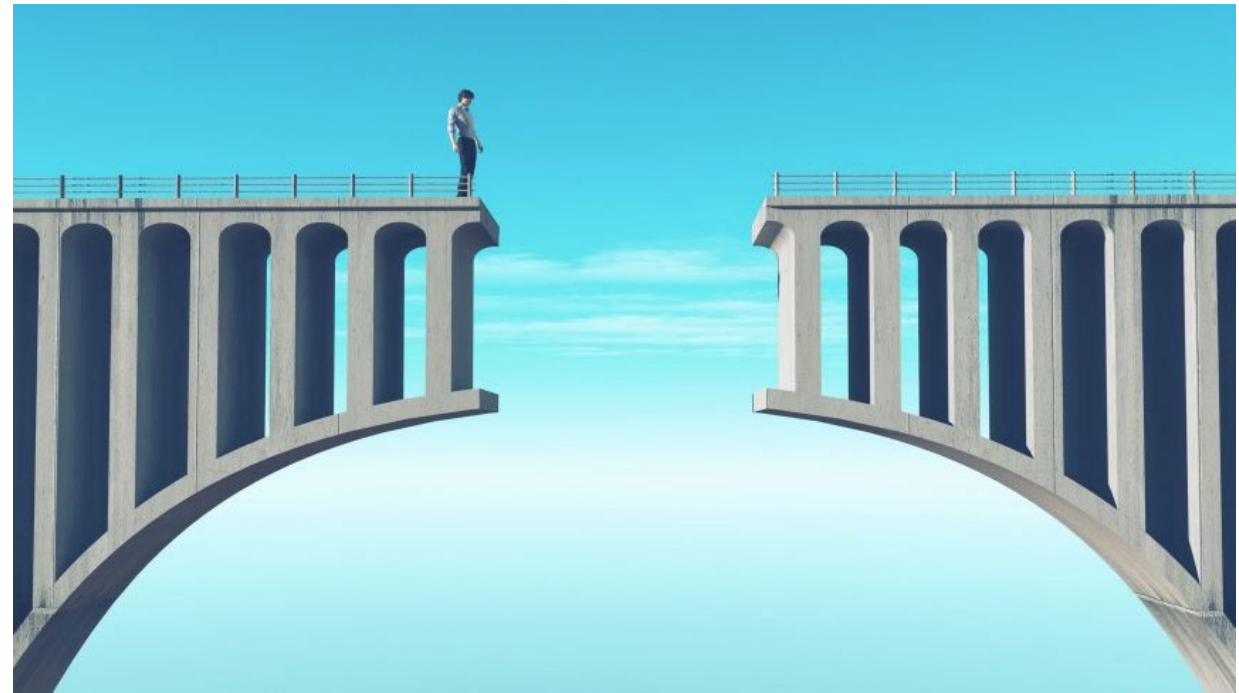


10. Any claims for hostile living environment?



11. Typical gaps in association coverage

- Social Engineering
- Mold & Pollution Related Claims
- Under Insured
- ITV
- Water Back up & Sewer
- Crime/Fidelity



12. What can communities do to prevent insurance claims?

Tips to lower/prevent the chance of an insurance claim/casualty loss:

- Communication with the membership is key! It's important for Board's and Community Association Managers to send yearly reminders to owners in Condominiums such as:
- Annual master insurance deductible reminder advising owners in condominiums of their responsibility of up to \$5,000 if their unit is the origin of a casualty loss for a condominium.
- Fall mailer/Broadcast e-mail reminding owners in condominiums to keep their unit heated to at least 60 degrees, have a plan for keeping the unit heated if going away on vacation/snowbirds.
 - (Mailing should be mailed to both the on-site address, or if there is an off-site owner both the on-site address and off-site address).
- Keep good records and logs!
- Keeping a file on rental units with lease and contact information and emergency contacts can help prevent additional damage with quicker contact.

12. What can communities do to prevent insurance claims?

Tips to lower/prevent the chance of an insurance claim/casualty loss:

- Know where your utility cut offs are!
- The most important initial part of a casualty loss is preventing damage both immediate and in the future. Minutes, even seconds can affect the costs of a casualty loss.
 - Have your common area water and gas cut offs marked with a tag so both the Board and management know where they are located to cut off water when needed (mainly for Condo's and HOA clubhouses)
 - Have a local handyman on call who knows where these cut offs are
 - Have an IICRC certified mold remediation company on retainer for mitigation.
- Yearly Insurance review - Reserve Studies
- It is vitally important that you have your insurance agent or company review your policies each year to ensure you don't have any holes in coverage

12. What can communities do to prevent insurance claims?

HB108 & SB175

Summary

Specifying that the council of unit owners' property insurance deductible is a common expense if the cause of any damage to the condominium originates from an event outside of the condominium units and common elements; increasing, from \$5,000 to \$10,000, the maximum amount of the council of unit owners' property insurance deductible for which a unit owner is responsible; applying the Act to all policies of property and casualty insurance issued, delivered, or renewed in the State to a condominium council of unit owners; etc.



13. Lack of knowledge and information about HO-6 policies

Lack of Knowledge and Information about Unit Owners Personal Insurance Policies

- Here are the basics: If you live home that is part of a Community Association, you should always have two insurance policies for that home: your Master Policy and your Unit Owners Policy.
 - Every Manager knows that every Community Association has a Master Policy. Some are more complicated and have several.
 - Where there are most commonly gaps in coverage is with the Unit Owners Policy.
 - There is confusion because there are so many different types of Unit Owners Policy. In short, tell your owners to talk to their agent.
- Here's the long answer: In an HOA the Unit Owner should have a HO-2, HO-3, or HO-5 Homeowners Policy when the home is Owner Occupied. When the home is tenant occupied, they require a DP-1, DP-2, or DP-3 (aka Dwelling Fire Policy).
- In a Condo Association the Unit Owner requires a HO-6 Policy for either Owner or Tenant Occupied homes.

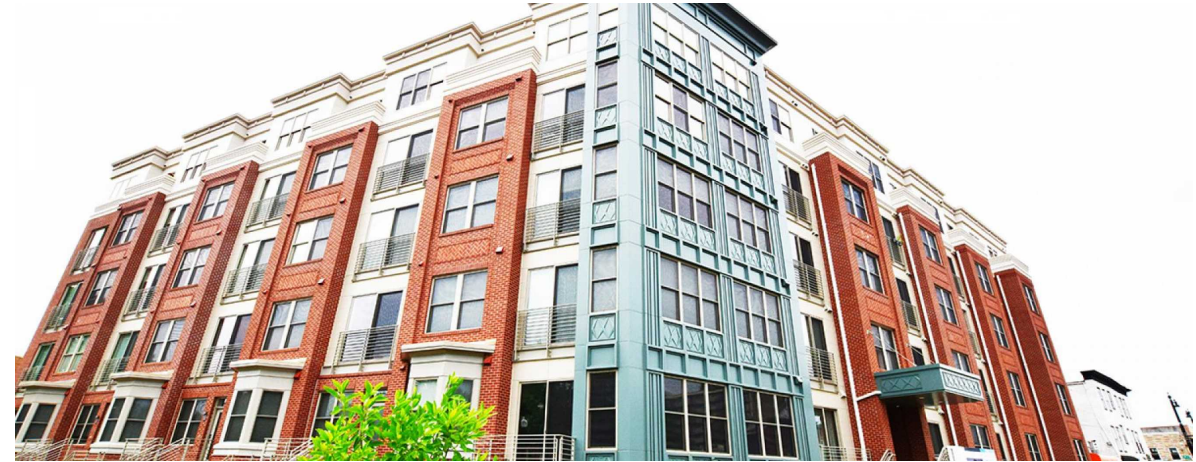
13. Lack of knowledge and information about HO-6 policies - Master Policy

- Condo Building Coverage - Walls In or Out
- Association General Liability
- Directors & Officers
- Surety Bond
- Common Areas



13. Lack of knowledge and information about HO-6 policies - Unit Owners Policy

- Contents/Personal Property
- Personal Liability
- Loss Of Use
- Loss Assessments
- Betterments or Improvements aka Additions & Alterations
- ID Theft



14. What is the standard process for a claim that is not a claim involving environmental issue?

Claim-related example:

Broken water line floods the building
(covered)



Non claim-related example:

Pre-existing water and/or mold damage from vapor diffusion
(NOT covered)



Potential Insurance Claim Scenario



7 Days Later

- Unit owner returns from vacation
- Mold Growing on walls, ceiling and floors
- Musty smell throughout unit
- Must relocate to hotel
- Added expenses



15. Environmental/mold claims

When

- Call the Mitigation / Remediation company ASAP at first sight of water damage or flooded building space
- Call the Environmental Company 48 hours after a water /sewage loss, if it has NOT been mitigated properly
- Visual microbial growth / bio-films over 10 sq ft before and/or after mitigation process
- Complaints of illness, physical discomfort or possible psychosomatic syndrome



15. Environmental/mold claims

How

- Have the property manager, adjuster, client, occupant or authorized employee of your firm contact the Mitigation or Environmental company and document the date and time this action was taken
- Be prepared to give history of the claim, contact information of all parties involved and specific do's and don'ts for discretionary communication



15. Environmental/mold claims

Why

- Layer liability
- To have certified and/or licensed professionals on site sharing responsibility
- Develop comprehensive work plans/protocols to know what to do and what NOT to do



Top 10 ways to protect all parties during mitigation efforts

1. Stop the water intrusion, then evacuate and evaporate the water
2. Flood cut sheetrock after being wet for 48 hours and/or to evacuate and evaporate trapped water
3. If over 10 square feet of mold is discovered, STOP all demolition work
4. Contain area
5. Notify occupant, owner or authorized personnel
6. Request inspection and testing of third party Indoor Environmental Professional (IEP)
7. Wait for protocol and lab results
8. Follow protocol
9. Get clearance inspection and testing completed
10. Rebuild / Restore

Property Policy Exclusion....

Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.



Q&A



Thank you!

talk. listen. respect.



Community Association Civility Pledge

A commitment to fostering a climate of open discussion and debate, mutual respect, and tolerance between all who live in, work in, and visit our community.

1. We expect each individual, whether a resident, guest, board or committee member, community association manager, staff member, business partner, or contractor, to be accountable for his or her own actions and words.

2. We believe all interactions in the community should be civil despite any differences of opinion on a particular issue. We believe in finding common ground and engaging in civil discussion about community issues important to each of us.

3. We vow to respect all points of view and will strive to provide a reasonable opportunity for all to express their views openly—without attacks and antagonization. We agree to keep our discussions focused on the business issues at hand, as well as on the ideas and desired outcomes.

4. We urge all residents to be engaged and informed. Get to know your neighbors, your board members, and your community manager. Attend meetings, join a committee, or serve on the board. Understand the community's rules, regulations, and covenants, and the value they add. Ask questions, share your opinions, and vote.

5. We also encourage all residents to review Community Associations Institute's (CAI) Rights and Responsibilities for Better Communities. The principles laid out in the document can serve as important guideposts for all those involved in our community: residents, guests, board and committee members, community association managers, staff members, business partners, and contractors. Read more at www.caionline.org/RightsandResponsibilities.

6. We believe these commitments to civility, as well as engaged and informed residents, are a vital part of our shared goal of being a vibrant, thriving community.

These commitments are guiding principles. They are not governing documents or legally enforceable and do not give rise to penalties if they are not followed.

If you agree with these commitments to civility, please sign and return the document.

COMMUNITY ASSOCIATION NAME

ADOPTION DATE

By the creation and adoption of the CAI Civility Pledge, the College of Community Association Lawyers (CCAL) recognizes the importance of civility in community association governance. Complete and email your civility pledge to government@caionline.org. For questions, call (888) 224-4321.



talk. listen. respect.

Community Association Commitment to Civility



HOW CAN YOU MAKE IT HAPPEN? Adopting the Civility Pledge Starts with YOU!

1. Distribute the document throughout your community, announcing and publicizing where and when the adoption will be considered.
2. Explain why this is important to your community and the benefits it can create.
3. Review and discuss the merits of the principles at an open meeting of your board of directors.
4. Solicit input from homeowners.
5. Hold a board vote to adopt a resolution endorsing the Community Association Civility Pledge.
6. Share the news of adopting the Community Association Civility Pledge throughout your community regularly. Post on your website, social media, and on every community association meeting agenda.
7. Tell CAI that you've adopted the Community Association Civility Pledge so we can share the information on our website.
8. Once your community association board of directors has adopted the Community Association Civility Pledge, share the good news with CAI by completing and submitting the following information.

DATE OF ADOPTION

COMMUNITY ASSOCIATION NAME & WEBSITE

PRIMARY CONTACT NAME

PRIMARY CONTACT INFORMATION (ADDRESS, PHONE, & EMAIL ADDRESS)

Complete and email to government@caionline.org. Questions? Call (888) 224-4321, or submit an online form at www.caionline.org/civilitypledge.

Rights and Responsibilities for Better Communities

Principles for Homeowners and Community Leaders

More than a destination at the end of the day, a community is a place people want to call home and where they feel at home. This goal is best achieved when homeowners, non-owner residents and association leaders recognize and accept their rights and responsibilities. This entails striking a reasonable balance between the preferences of individual homeowners and the best interests of the community as a whole. It is with this challenge in mind that Community Associations Institute (CAI) developed Rights and Responsibilities for Better Communities.

Rights and Responsibilities can serve as an important guidepost for all those involved in the community—board and committee members, community managers, homeowners and non-owner residents.

Homeowners Have the Right To:

- A responsive and competent community association.
- Honest, fair and respectful treatment by community leaders and managers.
- Participate in governing the community association by attending meetings, serving on committees and standing for election.
- Access appropriate association books and records.
- Prudent expenditure of fees and other assessments.
- Live in a community where the property is maintained according to established standards.
- Fair treatment regarding financial and other association obligations, including the opportunity to discuss payment plans and options with the association before foreclosure is initiated.
- Receive all documents that address rules and regulations governing the community association—if not prior to purchase and settlement by a real estate agent or attorney, then upon joining the community.
- Appeal to appropriate community leaders those decisions affecting non-routine financial responsibilities or property rights.

Homeowners Have the Responsibility To:

- Read and comply with the governing documents of the community.
- Maintain their property according to established standards.
- Treat association leaders honestly and with respect.
- Vote in community elections and on other issues.
- Pay association assessments and charges on time.
- Contact association leaders or managers, if necessary, to discuss financial obligations and alternative payment arrangements.
- Request reconsideration of material decisions that personally affect them.
- Provide current contact information to association leaders or managers to help ensure they receive information from the community.
- Ensure that those who reside on their property (e.g., tenants, relatives, friends) adhere to all rules and regulations.

continued on next page

Community Leaders Have the Right To:

- Expect owners and non-owner residents to meet their financial obligations to the community.
- Expect residents to know and comply with the rules and regulations of the community and to stay informed by reading materials provided by the association.
- Respectful and honest treatment from residents.
- Conduct meetings in a positive and constructive atmosphere.
- Receive support and constructive input from owners and non-owner residents.
- Personal privacy at home and during leisure time in the community.
- Take advantage of educational opportunities (e.g., publications, training workshops) that are directly related to their responsibilities, and as approved by the association.

Community Leaders Have the Responsibility To:

- Fulfill their fiduciary duties to the community and exercise discretion in a manner they reasonably believe to be in the best interests of the community.
- Exercise sound business judgment and follow established management practices.
- Balance the needs and obligations of the community as a whole with those of individual homeowners and residents.
- Understand the association's governing documents and become educated with respect to applicable state and local laws, and to manage the community association accordingly.
- Establish committees or use other methods to obtain input from owners and non-owner residents.
- Conduct open, fair and well-publicized elections.
- Welcome and educate new members of the community—owners and non-owner residents alike.
- Encourage input from residents on issues affecting them personally and the community as a whole.
- Encourage events that foster neighborliness and a sense of community.
- Conduct business in a transparent manner when feasible and appropriate.
- Allow homeowners access to appropriate community records, when requested.
- Collect all monies due from owners and non-owner residents.
- Devise appropriate and reasonable arrangements, when needed and as feasible, to facilitate the ability of individual homeowners to meet their financial obligations to the community.
- Provide a process residents can use to appeal decisions affecting their non-routine financial responsibilities or property rights—where permitted by law and the association's governing documents.
- Initiate foreclosure proceedings only as a measure of last resort.
- Make covenants, conditions and restrictions as understandable as possible, adding clarifying "lay" language or supplementary materials when drafting or revising the documents.
- Provide complete and timely disclosure of personal and financial conflicts of interest related to the actions of community leaders, e.g., officers, the board and committees. (Community associations may want to develop a code of ethics.)

Sponsored by CAI's President's Club

Visit www.caionline.org; write cai-info@caionline.org;
call (888) 224-4321 (M–F, 9–6:30 ET)

The ABC's of D&O

Insuring Your Board's Decisions

BY LISA IANNUCCI



Good afternoon—and welcome to the board. Your mission should you choose to accept it is to make decisions to better your building. The residents may not like you and, more importantly, may not like those decisions. Nevertheless, keep doing the job you're doing. In a worst-case scenario, you will be sued. Perhaps more than once. Should anything go wrong, don't worry; you're protected by the board's D&O insurance. Good luck."

On-the-Job Protection

You volunteer to be on your co-op or condo association's board. You do your best to help make the right decisions and make your building a great place to live. Unfortunately, one of your fellow residents doesn't like a decision you made

and takes you and the rest of the board to court. They are suing for thousands of dollars—maybe even millions. Your home, life savings and other assets are at risk if you lose.

With stakes like that, it would be virtually impossible for co-op and condo boards to find volunteers if there wasn't some form of protection from lawsuits resulting from the decisions made by board members in the course of doing their job. Fortunately, that protection exists, in the form of Directors and Officers, or D&O insurance.

Some people think that it's only the board that starts the lawsuits when homeowners are late with dues, or because they broke the rules, but lawsuits are a two-way street, says Kevin M.

LaCroix, Esq., executive vice president of OakBridge Insurance Services, an Ohio-based insurer with clients in New York City.

"They can be sued by members of the HOA and by third parties who provide services or goods to the association," says LaCroix. "There's no reason to serve on a board and face risk of potential liability without adequate coverage."

Take a recent lawsuit profiled in *The New York Times* where the former president of a co-op board sued the board, claiming that racial discrimination was the reason the board did not let him buy a neighboring apartment. The board debated that the resident couldn't afford both units. They went to court—and the legal fee meter started ticking overtime.

A few years ago, *Money* magazine profiled an ongoing legal battle in California where a homeowners association was suing a resident for taking too long to do their landscaping. The resident lobbied back with a countersuit.

In Michigan, a resident filed a lawsuit to against his condominium association to resolve a dispute over who should pay for a road repair in a condominium complex where he owns a unit. The resident wasn't happy that the association was assessing the residents to pay almost \$30,000 to repair an access road, which the resident said was a public road. The resident decided to sue the board and let a judge decide.

"People get emotionally excited about what you do as a board member," says Kevin Davis, president of Kevin Davis Insurance in Los Angeles, California. "You tell them no you can't have a pet, or hang your laundry on the balcony. The residents will say 'Who are you to tell me that I can't?' It's the number-one reason for lawsuits."

Crash-Helmet Coverage

Think of D&O, or directors and officers,

insurance, as your own personal protective helmet from fastball lawsuits. "The main intent is to protect the directors and officers and the association for their decision-making in the event that they are sued," says Adam S. Collins, CIC, and assistant vice president at Aon Affinity, Ian H. Graham Insurance in Sherman Oaks, California, which has multiple clients in New York City.

"Volunteers are making decisions that often times involve large amounts of money that can impact every unit owner within the association," says Collins. "Without D&O coverage, board members' personal assets are at stake. Often, the building's [conditions, covenants and restrictions] CC&Rs and bylaws will have some form of an indemnification clause but this would ultimately result in assessments against the board and fellow unit owners as your defense fund. In the event that association only is named, then the association will essentially be self-insured and will be responsible for

all legal fees incurred as a result of the claim. D&O coverage is there to allow these volunteers—who are simply trying to do the right thing—sleep at night for their decision making."

Fortunately, Davis says that most lawsuits really don't have anything to do with money. "They are suing because they want a right to do something," he says. "For example, an individual in Unit H on the second floor had a nice view but now a tree is blocking it. He asks to have it cut

down. The resident in the unit below him says no, it's shading his apartment. In this case, the board didn't uphold their fiduciary responsibility. If Unit H bought a view, they need to make sure they maintain the view, so they'll go to court, just to see who's right and who's wrong."

Whos & Whats

To find out if your board has a policy, just ask. However, don't assume you're automatically covered without taking a

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"Volunteers are making decisions that often times involve large amounts of money that can impact every unit owner within the association. Without D&O coverage, board members' personal assets are at stake."

—Adam S. Collins

THE ABC'S OF D&O

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good look at the policy. Like fingerprints, every D&O policy is different.

Collins also recommends that co-ops and condos purchase a stand-alone D&O policy as opposed to an endorsement that can be added to the larger package policy. "If you have an embedded form that incorporates the D&O on a package policy, with other coverages, such as property, general liability, and so forth, it typically only covers the current directors and officers," he says. "A stand-alone policy will typically protect all past, present and future board members, committee members, and the property manager. It depends on the quality of the coverage that is purchased."

Also, remember "a stand alone policy automatically includes the property manager as an insured, whereas most embedded forms do not," he adds. "In addition, other key coverages that are included, such as non-monetary relief, third-party discrimination, failure to maintain or obtain insurance, and employment practices liability, are usually excluded under the D&O coverage provided by the package policy."

There are other exclusions as well. "The myth is that D&O insurance covers everything, which obviously isn't true," says Collins. "Some of the more important exclusions contained in a D&O policy are damage or destruction to tangible property, bodily injury, construction defects, and intentional criminal acts."

That last item is a very important one. Does D&O coverage protect the co-op, condo, or HOA from criminal actions by the director or officers? It seems a straightforward enough question, but it can sometimes be surprisingly tough to answer.

"Most, if not all, D&O policies contain a provision that excludes intentional criminal and fraudulent acts committed by board members," says Collins. "However, [our policy] will continue to defend the directors and/or officers until such time that a criminal action can be proven. The policy will then cease to provide any further protection once it is determined that a board member knowingly committed a criminal or fraudulent act."

D&O coverage also doesn't indemnify a board or board member against decisions made "in bad faith," or with illegal intent. If a board is found to have acted in an illegal manner—deliberately discriminating against a prospective buyer, for example—and are hit with punitive damages, members are on their own when it comes to paying them.

What is the Cost?

A stand-alone policy typically starts at a minimum annual premium of around \$1,200 and will increase depending on the number of units in the building and other factors. The co-op or condo is generally responsible for paying the premium for this specific type of coverage.

"Premiums can also be impacted by additional exposures—such as commercial tenants, to name one—and/or the number of employees," says Collins.

When it comes time to cutting a check, Collins says that not all D&O policies are created equal. "Most stand-alone policies contain a 'Duty to Defend' provision," says Collins. "In other words, our D&O provides a defense for the board once they accept the claim. The obvious benefit is that the association doesn't have to front the money (except for the retention) in hopes of having it reimbursed to them by the association or the insurance policy, as is the case with a standard D&O policy or embedded form. The converse to that is an 'indemnification' provision is contained in some less comprehensive D&O forms."

If your association doesn't have or won't get insurance, the Nonprofit Risk Management Center (NRMC), says that every state has a volunteer protection law and the federal Volunteer Protection Act (VPA) became effective in September. The VPA provides that, if a volunteer meets certain criteria, he or she shall not be liable for simple negligence while acting on behalf of a nonprofit or governmental organization.

The VPA also provides limitations on the assessment of non-economic losses and punitive damages against a volunteer. The Volunteer Protection Act does not, however, protect a volunteer from liability for harm "caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer." The act does not prohibit lawsuits against volunteers nor does it provide any protection for nonprofits.

Some of the notable stand-alone D&O programs that are specifically tailored to community associations are written with CNA, Travelers, Great American, Chubb and Chartis.

To reduce any potential expenses from D&O insurance, it's best to have a board that is well informed of their responsibilities. "Know, understand and follow the bylaws and CC&R's, educate all board members, and attend law seminars, risk management seminars, specifically designed for community association boards," advises Collins, who also recommends both The Cooperator and the Community Associations Institute (CAI) as two viable resources for board member education.

It's tough enough to get people interested in taking positions on their co-op or condo board without the threat of lawsuit damages hanging over their heads. Board education and good communication are two pieces of protection against legal action; a solid D&O policy is a vital third piece of the puzzle. ■

Lisa Iannucci is a freelance writer and author and a frequent contributor to The Cooperator and other publications.

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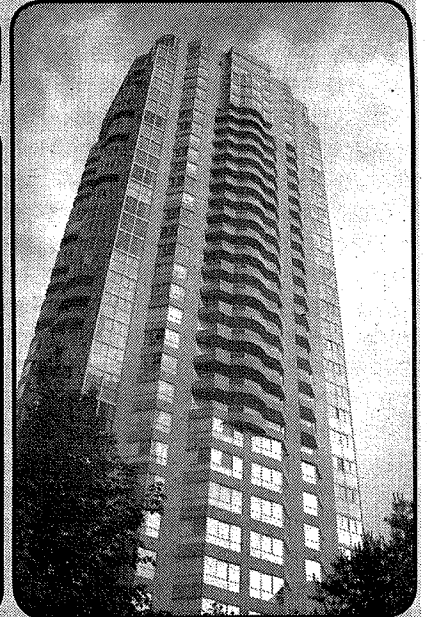


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