RB REES BROOME, PC
ATTORNEYS AT LAW

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Community Associations Newsletter

We're Insured for That; Aren't We?

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Insurance policies are complicated. They aren't fun to read, and they are very hard to understand. Unfortunately, insurance policies are also very important. Thousands and thousands of dollars are often at stake when it comes to annual premiums and insurance claims.

Given all of this technical difficulty and the potential dollars that are at stake, there are several principles in mind that Boards should follow when it comes to insurance. First and foremost, pick an experienced insurance agent who works regularly with community associations. Community associations have unique characteristics and needs. Only an experienced insurance agent will understand your operations and provide a suitable array of policies that reasonably covers all of your operational risks at a fair price. Second, ask your attorney on a periodic basis to review the policies that your Association has in place in order to make sure that these polices comply with the requirements of law, the Association's legal documents, and other legally applicable requirements, such as those that are pertinent to federal lending programs. While your insurance agent will always know more than anyone about what your policies say about coverage and exclusions, it is also true that they are not privy to all of the events going on within the legal marketplace that affect insurance. Your attorney will know more about these matters and can often work with your insurance agent in order to ensure that your Association is properly and reasonably covering the Association.

Without this type of professional help and expertise, it is nearly impossible for a volunteer Board to sort out the Association's insurance needs in a time-efficient manner. If your Association is professionally managed, it is always wise for your Board to rely upon your manager's contacts within the insurance field. Regardless of what type of community association you serve, your association should have the following policies in place, at a minimum: a Directors and Officers Liability Policy, a Fidelity Bond, and a Comprehensive Liability Policy. If your association is a condominium association, your Board will also need to obtain a Master Property Insurance policy as well, which, of course, is also true about many of our non-condominium association clients that own and operate clubhouses and other facilities. Depending upon your operations and property assets, your Board may need other policies, too.

With respect to the three main policies that all associations should be carrying, there are no exceptions. All associations should be protecting their volunteers with a Directors and Officers Liability Policy. With all of the decisions that Boards and Committees have to make as they perform their roles and duties, it is almost inevitable that someone is going to strongly disagree with one

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or more of those decisions, and, quite possibly, that disagreement will take form in a lawsuit or legal claim with a governmental agency. A well-written Directors and Officers Liability Policy will cover the costs of defense of that lawsuit or legal claim even if the claimant seeks legal measures only against the Association and not the Directors personally. This coverage can save the Association thousands of dollars because an attorney will still have to put in the time and effort to defend the position of your Association even when a lawsuit or claim lacks merit.

Since all associations cannot function without money, a Fidelity Bond is absolutely imperative in order to cover the risk that someone might embezzle your Association's funds. Given the weaknesses within human nature, we cannot think of any reason why a Board should not obtain such coverage. On occasion, we will receive a question from a client about the necessity of obtaining such coverage when their management agent represents that they are already bonded. The answer is always the same: your association needs a policy in its own name that protects your association against theft committed by anyone who has access to your association's money. This is the only certain way to protect your association and to provide your Board with adequate control over the claim-making process. The amount of coverage that your association needs is a function of the amount of funds that your association has within its ownership. A good rule of thumb is to make sure that your fidelity bond covers at least a quarter of your annual income and the entirety of the amount that your association carries in reserve. Board members should be aware that in some jurisdictions, such as Virginia, the minimum amount of fidelity coverage Associations must carry is mandated by statute.

A Comprehensive General Liability Policy is also a must. These policies cover the Association against an array of bodily injury and personal liability claims. Again, at the risk of being repetitive, we cannot envision any situation where it would be appropriate for a Board to decide not to buy such coverage. As all of us know, lawsuits get filed for all kinds of reasons. While slip, fall, and bodily injury claims relating to an accident that takes place in your common area are the most common, the variety of claims that are covered under these policies is often vast. Associations have been sued for defamation, invasion of privacy, and many other reasons. Boards should have a general understanding that the Comprehensive Liability Policy covers the association's defense costs and judgment liability exposures for the primary risks that relate to the association's main operations.

After this winter's rash of property damage claims, all Boards of Condominium Associations are probably more familiar with their Property Damage Insurance than ever before. Most condominiums have a "single entity" policy, which covers both the common elements and the units, but not the improvements within a unit.

We are often asked whether the Association must file a claim under the Association's Property Damage Insurance Policy when an owner negligently damages his or her own unit. The answer is yes, assuming that the cost of remediation exceeds the amount of the deductible under the policy and assuming that the claim is not excluded from coverage for other reasons. The operative theory is that the owner paid his or her pro-rata share for the obtainment of this insurance, and, therefore, is entitled to the benefits of the policy, much like a motorist would be covered under his or her own insurance policy for the damages he or she may have caused as a result of his or her negligence.

In sum, insurance policies are complicated. It's always wise to get some professional help.

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