



March 2023 Newsletter

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Most Common Reasons Board Members are Sued



Association Boards sometimes find themselves in legal trouble for many reasons. After reviewing facts in previous suits, claims filed against directors and officers can often be avoided.

One top reason Board members are sued is because owner's don't always read governing documents when purchasing property within an association. This leads to misunderstandings, and factors into poor decision making. When purchasing a property in a community, all owners need to read the governing documents. If an owner seeks a Board position, the candidate must revisit the governing documents for a refresher. Encourage all owners, new and established, to read governing documents and understand their responsibilities. Board members need to understand their role and the specific boundaries stated in the governing documents, as well. Poor and uninformed decisions or decisions outside ones authority can potentially cause a claim situation. Boards must consider adopting a transition process for new Board members that includes sharing and reviewing governing documents. This will help reduce the association's exposure for lawsuits.

A second reason Boards find themselves entangled in a suit is because members do not understand their roles and responsibilities. When a Board member finishes a Board meeting, they become an owner again. They no longer wear the Board member hat or have Board

member authority. Board members may find themselves in trouble when over-stepping this boundary. A Board member's responsibilities include following and enforcing an association's governing documents and ensuring an association runs smoothly.

When Board members understand their boundaries and roles, an association will reduce their liability risk and possibly avoid costly lawsuits. Consider joining an organization such as CAI, Community Association Institute (<http://www.caioregon.org/>). Trade associations like CAI are vital educational agencies for communities. They provide resources, educational programs, and access to other community association specialists. These industry experts can help foster economic and financial stability within our community associations.



Register by
April 7!

April 29th, 2023
8:30 am to 4:50 pm

The CAI Board Leader Certificate Course teaches you how to communicate with association residents, hire qualified managers and business partners, develop enforceable rules, interpret governing documents, and more. **Registration closes April 7:** <http://www.caicentraloregon.org/board-leader-certificate.html>

Common Exclusions: Liability Mold Exclusion

COMMERCIAL GENERAL LIABILITY
CG 21 67 12 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FUNGI OR BACTERIA EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:

2. Exclusions

This insurance does not apply to:

Fungi Or Bacteria

a. "Bodily injury" or "property damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.

B. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

2. Exclusions

This insurance does not apply to:

Fungi Or Bacteria

a. "Personal and advertising injury" which would not have taken place, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury.

We live in a state that is WET! Mold and bacterial growth can be common throughout buildings that are not properly maintained, don't have adequate ventilation, or develop an undiscovered or remediated water leak. Bacterial growth can also make people extremely sick and create a life safety concern for the community.

Often under property insurance policies, little if any coverage exists for bacterial growth clean up. The liability section of insurance policies often includes an exclusion for bacterial growth. This exclusion exposes both the Board and owners to lawsuits. If involved in a lawsuit, the Board and owners could pay out-of-pocket to defend any judgement with no help from the insurance carrier.

To prevent future loss and claims, I urge owners to get involved and allow association Boards to follow through with necessary building envelope maintenance. I encourage Board members to seek and interview reputable companies to ensure the project is completed correctly. It is tough to hear stories from associations who spend considerable money to repair a problem and then learn after 10-15 years that the work was done incorrectly. A reputable consultant who works with you throughout the project or inspects the completed work is worth the extra cost. Ultimately this saves everyone money, time, and aggravation.

An Owner's Burning Question



Question: If the association's master policy covers the units and improvements (all-inclusive coverage) do I still need to notify my association when I make improvements to my home?

Answer: YES! If your association picks up the coverage for betterments and improvements, owners must inform the association Board on the value of unit improvements. Many associations' governing documents have a requirement for owners to notify the Board within the first few thousand dollars of improvements (document language varies from \$500- \$5,000). If the owner doesn't notify the Board, the association can't guarantee coverage is included in the building limit. It is the owner's responsibility to keep track and notify the Board regarding improvement values.

Q&A

Update of the Month: Gutters and Downspouts



This winter was brutal with two major freezes and a good windstorm. These weather events likely created some havoc on our buildings and homes. Now is the perfect time to clean and check gutters and downspouts. Heavy rains are common in the spring and removing debris will help prevent clogs and backups. Debris that remains in a gutter can rot and pose issues to the wood trim if not removed. When hiring professionals for your home or association, always make sure to collect their insurance information and include basic contract language for minimum insurance requirements. Reach out to us if your community would like a sample contract.

We Want Your Input!

Have a question or want to see a specific topic highlighted in next month's newsletter?

Email me today:

association-news@abipdx.com

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