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INDUSTRY NEWS, TIPS, TRICKS, & RESOURCES

Safeguard Your Board from Lawsuits

Serving on your association's board of directors can be a gratifying experience. As a board member, you make decisions that help keep the association's space beautiful and functional for the benefit of the entire community. On the other hand, the possibility of legal action being taken against the board is always present. Understanding the most common types of allegations against boards, as well as how to safeguard against them, can minimize the risk of such lawsuits.

If a board is named in a suit, Directors & Officers Liability Insurance protects past, present, and future board members from financial consequences due to alleged wrongful acts, decisions, or omissions. In the event of a covered claim, the policy pays for the loss if the board loses the lawsuit. It also covers the association's legal defense costs. These costs to defend will fall to the board, regardless of whether an allegation against an association's board is determined to be true. Below are the most common incidents that give rise to Directors & Officers Liability Insurance claims.

- **Breach of fiduciary duty** – An association's board of directors has a legal obligation to act in the best interests of the association. Boards may be sued for breach of fiduciary duty if someone alleges that this obligation was not upheld. Some common examples include failure to enforce the governing documents, enforcing governing documents inconsistently, or failure of due diligence prior to a financial decision.
- **Discrimination** – Community associations may be sued under the Fair Housing Act or the Americans with Disabilities Act if a decision made by the board is construed as a wrongful act or discrimination. Examples include failure to make reasonable accommodations for a disabled homeowner, as well as discriminatory acts based on age, race, or religion.

- **Violation of Covenants, Conditions, and Restrictions (CC&Rs)** – An association's CC&Rs detail rules that must be followed by unit owners, board members, and the association. If someone feels the board has violated part of the CC&Rs, they may sue. These violations may include misuse of funds, failure to maintain common elements, denial of unit owner architectural modification requests, or suits challenging an HOA fine assessed against a unit owner.

To help prevent lawsuits and claims against the board of directors, take preventative measures to avoid issues from arising in the first place.

- **Educate and train board members** – Board members should understand and regularly review the governing documents and reserve study. They should understand what their fiduciary responsibilities entail.
- **Leverage professional guidance** – Speak with the board's legal counsel, insurance agent, and other advisors and follow their advice.
- **Obtain comprehensive Directors & Officers Liability Insurance coverage** – Ensure the association always carries a D&O policy that includes appropriate coverage provisions.

The first step board members can take to avoid lawsuits and claims is to understand the common issues that give rise to disputes within community associations. With forethought and prevention, your association's board will be prepared for the challenge of serving your association.



New Unit Owner Insurance Essentials



Each condominium unit requires a homeowner policy (HO6). This policy is separate from an association's policy, and both are necessary to ensure proper coverage for your unit. A homeowner policy will help ensure proper coverage for your unit and the association's deductible.

What are possible coverages?

- **Dwelling Coverage** includes coverage for a structure in the event of a covered loss. Generally, damage to walls and fixtures is included, but not contents. The dwelling coverage in an HO6 policy may also respond to cover the association's policy deductible under specific conditions for a loss to a unit.
- **Personal Property** includes coverage for contents inside the condo. Furniture and clothing are good examples of personal property.
- **Personal Liability Coverage** pays for claims of bodily injury and property damage for which you are found liable. If someone is injured on your property or you are held responsible for damage to someone else's property, you are protected within the limits of your policy for a qualifying claim. The policy may also provide some defense in a lawsuit if the injured party files a suit against you.
- **Loss Assessment** helps cover a unit owner's portion of damage to common areas in the case of an insurable loss. In the event a common area is damaged, or a lawsuit is brought against the HOA, the amount not covered by the association's policy would be shared by the community. With a qualified loss, this coverage could apply to all of a unit owner's responsibility or a portion. However, an assessment for maintenance-driven losses is typically not covered by an insurance policy.
- **Loss of Use** allows coverage for additional living expenses if your condo unit is damaged and you are required to live elsewhere during the repair.
- **Sewer Back Up and Drain Overflow** generally provides coverage for specific events when sewer lines back up or there is an overflow occurrence (sinks, washers, toilets). This coverage is typically added as an endorsement.

If you have questions on coverage, please contact one of our knowledgeable agents. Based on the association's policy and deductible, our agents can make recommendations to help ensure you have proper coverage for your unit. 503.292.1580

Safety Check Keep Extinguishers Ready

Has your association considered fire extinguishers as part of the community's fire safety plan? Fire extinguishers help save lives and property in the event of a small fire. It is crucial your community association regularly services your fire extinguishers so they are always ready to use. Regular fire extinguisher service also impacts your association's insurance policies.

Most insurance carriers expect associations to have fire extinguishers serviced and inspected annually. Extinguishers must also be replaced regularly per the manufacturer's guidelines (usually every 5-15 years). If the tags on the extinguishers are not up-to-date during an onsite inspection ordered by the carrier, the association will likely be required to have the extinguishers inspected immediately and provide proof the inspection was completed. The inspector will also note if fire extinguishers are not mounted to a wall in a visible, accessible location at an appropriate height.

Check local fire codes to learn the guidelines your association needs to follow for fire extinguishers.



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