



4 THINGS
YOU MAY
NOT KNOW
ABOUT
*Community
Insurance*



FirstService
RESIDENTIAL

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How much do you know about community association insurance?

Every community's bylaws and declarations include requirements to provide homeowners association insurance coverage, and board members have a fiduciary duty to protect the best interest of their HOA and owners. Additionally, associations are under pressure to find the least expensive homeowners association insurance options available. But there is a caveat—in community insurance, as in most things, buyer beware—not all policies are alike, and if you neglect certain types of coverage, you may end up paying a much higher price.

So what type of community insurance coverage—and how

much of it—do you need? The first step is finding and working with a trusted insurance broker or agent. If you don't have one, start by asking for referrals from professionals, colleagues or a good community management company with strong relationships with experienced insurance providers.

"It's always best to choose an insurance agent or broker with a successful track record in community association insurance—they can tailor a cost-effective program that ensures adequate coverage and meets your community's needs," says Kelly Lee, Vice President of Legal & Risk Management for the West/Texas regions of FirstService Residential. In addition, these knowledgeable brokers will

ensure the association benefits from policies—general liability, directors' and officers', umbrella and workers' comp—that have been customized to provide the special kinds of coverage needed by associations.

Indeed, association insurance is dynamic and complex, and consequently, board members may have misconceptions about what certain policies are and what they cover. Again, a trusted insurance agent can steer you in the right direction. But in the meantime, here are four insurance facts that you may not be aware of. ***Please be advised that this is not intended as professional advice—it's always best to consult with your insurance agent to ensure proper coverage for your association and board.***

PROTECTING ASSOCIATIONS

The Legal and Risk team, led by Kelly Lee, Vice President of Legal & Risk Management West/Texas, provides oversight in several key association operational areas. These include managing client matters and governance; ensuring clients' insurance policies are in place and lapses in coverage are avoided; and determining qualification requirements for client vendors and monitoring vendors' compliance.



1

DIRECTORS AND OFFICERS INSURANCE POLICIES ARE CLAIMS-MADE

Associations are typically required to carry Directors and Officers (D&O) insurance to protect their board members and officers from exposure to monetary and non-monetary complaints and claims—they're volunteers, but the decisions they make impact both their associations and fellow homeowners. D&O insurance protects board members and officers—as well as their spouses, committee members, volunteers, staff members, managing agent and community management firm—from allegations or lawsuits resulting from the decisions they make while in service to the association, as long as those

decisions were made within the scope of the insured's duties and performed in good faith.

While many associations carry D&O insurance policies, they may not be aware these are “claims-made” policies, not “occurrence” policies. What's the difference? Many liability policies are occurrence policies, which means they provide coverage for accidents or incidents that occur during the policy period. Not so with D&O policies. These are claims-made policies, so they typically cover claims that are made while the policy is in force, regardless of when the incident or conduct may have taken place.

People don't always come forward right after an incident occurs—sometimes they wait and file a claim at a much later date.

D&O GOTCHAS

Lee notes that claims-made policies require care in these two areas:

1. It's critical to report claims right away. The clock starts ticking as soon as the board learns of the issue and if the matter isn't tendered quickly, coverage can be denied.
2. It's also important to disclose potential claims—any situation that may trigger coverage—such as an email from an angry owner saying “I plan to sue the association.” During renewal time, carefully review your application for D&O insurance, even if your broker prepares it for you, since it must include these potential claims. We've seen insurers deny claims to associations when they've inadvertently omitted potential claims on the application.



Certain directors' and officers' policies exclude coverage for employment practices and discrimination claims. We recommend finding a policy that includes these risks.

“People don’t always come forward right after an incident occurs—sometimes they wait and file a claim at a much later date, sometimes right before their state’s statute of limitations expires,” says Jamie George, Vice President of Insurance for the West/Texas regions of FS Insurance Brokers, a licensed broker specializing in the placement of insurance policies for FirstService Residential clients. She explains that if an association has a D&O policy in place when the claim is filed, it covers the action of its officers and board members—past, present and future—from previous and future acts.

George also notes that a good insurance broker will add a retroactive date and/or Full Prior Acts clause to your D&O policy—ideally, dating back to when the association was incorporated. This will provide coverage for all incidents from that date forward, even if the policy is purchased at a later date. If your policy doesn’t include one or both, ask your broker to make that change.

Directors’ and officers’ policies cover both defense costs (to cover the association’s legal fees in defending the case) as well as indemnity costs (to cover the judgment or settlement amount). Many policies offer “defense outside the limits,” an unlimited

amount of money to defend claims, while the entire policy limit is preserved to pay any judgment or settlement.

Certain directors’ and officers’ policies exclude coverage for employment practices and discrimination claims. We recommend finding a policy that includes these risks, since we’re increasingly seeing associations named in suits brought by a vendor’s employees. For example, your landscaper’s employee could sue the association as his “employer,” alleging that the board directed his work.

2 UMBRELLA POLICIES ONLY COVER LIABILITY

Many associations believe that umbrella policies provide an added level of coverage for both property insurance and liability insurance—well, they're half right.

First, let's get some terms straight. Property insurance covers the community's tangible assets, such as residential buildings and their contents (but usually not inside the walls of individual units), clubhouses, swimming pools, tennis courts, gates, sidewalks, streets, trees and other common elements.

Liability insurance covers third-party claims arising from bodily injury or property damage to members of the public—or as

George succinctly describes it, “blood, guts and broken stuff.”

For community association insurance policies, umbrella policies “sit on top of” general liability and D&O liability policies (in other industries, they don't always cover D&O). They provide an extra layer of coverage, kicking in to plug liability gaps when the primary liability limits have been exhausted. In fact, some insurance brokers offer umbrella programs developed specifically for community associations. “These tailored programs are an excellent solution for associations to buy extra liability coverage at low cost,” says Sean Kent, Senior Vice President of FS Insurance Brokers.

However, umbrella policies provide additional coverage strictly for liability policies, not property insurance—but some associations mistakenly believe they cover both. They may think they can save money by purchasing a basic level of property insurance coverage—after all, won't their umbrella policy cover larger claims, if necessary? Unfortunately, it won't. Therefore, it's very important to be sure your association has adequate property insurance coverage from the get-go—an insurance broker with association experience can ensure your coverage complies with your governing documents and is sufficient to meet your needs.



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3 ALL ASSOCIATIONS NEED WORKERS' COMPENSATION COVERAGE

Some associations believe that if they don't have regular employees, they don't need workers' comp insurance. Actually, they do. Workers' comp protects the association if a hired contractor or casual laborer is injured on the job and does not carry insurance at all. For this reason, it is very important to obtain certificates of insurance for all vendors and contractors in advance. In addition, most workers' compensation policies can be endorsed to include coverage for volunteers—board members, committee

members and others—who sustain injuries on site. Lee noted, one of our board members slipped and fell during a landscape walk, and was happy to learn that the association's policy covered him. In fact, if a community is professionally managed, its property management contract will almost always require that it purchases workers' comp insurance.

"Just because an association doesn't have payroll doesn't mean they don't have the exposure," said Kent.

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CAUTION



WET FLOOR

4 THE IMPORTANCE OF HAVING BUILDING ORDINANCE & LAW COVERAGE – PARTS A, B & C

Many associations erroneously believe that their property insurance will cover damage or loss to their on-site structures, but that's not always the case. If your community was built many years ago, its buildings may not meet current building codes—and if buildings sustain complete or partial damage, your property insurance will only cover the

costs of rebuilding them to the original standards. Therefore, it stands to reason that the older the buildings, the greater the exposure for loss caused by the requirement to meet enhanced building codes.

What's the solution? Building ordinance and law coverage. This type of insurance coverage comes into play when an older

building is damaged and requires reconstruction. If the building was built according to obsolete safety standards, it must not only be repaired, but also be brought up to current city building codes—for example, replacing and upgrading older electrical, plumbing and/or HVAC systems, new engineering and design, or installing sprinklers and other fire safety measures.

Your property insurance will only cover the costs of rebuilding the community's buildings to the original standards, a risk for associations with older buildings not up to current codes.

If the costs of rebuilding to comply with current codes are higher than reconstructing to the old standards—and they almost always are—building ordinance and law coverage will fill this gap. But what many associations don't realize is that the only way to ensure complete coverage is to have all three parts—A, B and C—in force. Here's an overview:

COVERAGE A

Loss to the Undamaged Portion of the Building. Some local building ordinances require that buildings sustaining a specified percentage of damage (typically 50%) be demolished and rebuilt to meet current codes. So even though a building may only be partially damaged, Coverage A treats the claim as a total loss and pays the association accordingly.

COVERAGE B

Demolition. Continuing the scenario above, Coverage B covers the costs of demolishing the undamaged portions of the building and hauling away the debris.

COVERAGE C

Increased Cost of Construction. If building codes have changed since the time the building was originally constructed, Coverage C pays for the increased costs of bringing the reconstructed building up to current codes—for example, installing a fire sprinkler system throughout the building after a major fire.



George saw this firsthand with a new association client—a community originally built in the 1960s that did not have ordinance and law coverage through its previous insurance agent. The community clubhouse was badly damaged by fire, but the association's property insurance did not cover the much higher expenses to demolish the damaged structure, remove the debris and reconstruct the clubhouse to comply with current civil codes. The outcome? They could not rebuild.

Final Thoughts

PERSONAL LIABILITY:

What if you face a claim with damages that are higher than the limits of your policy?

Clint Goodman, prominent Arizona HOA attorney, advises: “Generally speaking, absent criminal acts and gross negligence (very rare), the indemnification provisions in the association’s documents protect board members above the association’s general liability and D&O coverage limits. However, boards should be aware that the costs to defend above limits would be absorbed by the HOA.”

FRAUD:

Ask your management company whether its crime insurance policy covers the “funds of others.” Only if it does will fraud against the association committed by managers be covered by the management

company’s policy, as it should be, instead of by your own crime (also called fidelity) policy.

VENDOR QUALIFICATION:

Protect the association’s insurance limits by ensuring that your vendors also have appropriate coverage so that their policies—not the association’s—will pay for damage vendors cause. That’s right: suppose a vendor leaves a hammer on the ground and a visitor to the association trips on it, breaking his leg. Since the vendor’s negligence caused the damages, its insurance should respond and pay for any lawsuit brought by the injured person. You can make sure this will happen by having protective provisions in the association’s agreement with the vendor, and via a robust vendor qualification program that requires the

vendor to additionally insure the association.

FLOOD:

Flood insurance is a coverage that all boards and homeowners should consider that is not “typically” required in the CC&Rs. Every once in a while you will see that flood insurance is required due to being in a flood zone. Community associations may have several areas that are prone to flooding, but not considered a “flood zone” so they are not required by the CC&Rs to carry flood coverage—even though they have a higher threat of flood.

OTHER POLICY TYPES:

Ask your broker about earthquake, cyber and other less-common policies that may be wise for your association to purchase.

Community insurance for your association can sometimes seem complicated and confusing to board members, but having the right policies in place—and the right insurance broker—can protect you and your association from risk and exposure. Review your policies frequently with your insurance agent and reach out to him or her any time you have a question or concern. For more community association best practices, visit FirstService Residential at www.fsresidential.com.

ABOUT FIRSTSERVICE RESIDENTIAL

FirstService Residential is North America's property management leader, partnering with 8,500 communities across the U.S. and Canada. HOAs, community associations, condos and strata corporations rely on our extensive experience, resources and local expertise to maximize their property values and enhance their residents' lifestyles. Dedicated to making a difference, every day, we go above and beyond to deliver exceptional service.

FirstService Residential is a subsidiary of FirstService Corporation (FSV), a North American leader in the property services sector. Find out how we can help your community thrive. Visit www.fsresidential.com.

ABOUT FS INSURANCE BROKERS

FS Insurance Brokers is a licensed broker in both the U.S. and Canada, assisting with the placement of insurance policies for nearly 4,000 FirstService Residential clients on an annual basis. As a core service, they provide added value to the client relationship through education, loss control programs, policy review and analysis, and support of the renewal process.



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<http://bit.ly/AZ-HOATips>



Let's chat.
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