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Insurance, What Looks Like a Risk, Is a Risk

Protecting the community association and board of directors requires a close look at insurance coverage and risk to prevent the coverage gaps that only become obvious after a loss or lawsuit and there is no payout. How do you protect the association and board? Start at the beginning. The fewer hazards a property has, the easier it will be to insure. What looks like a risk, is a risk, so minimize exposure or remove the risk if possible.

Directors and Officers Liability Coverage (D&O): Typically covers the board of directors. It should also include their spouses and the ARC committee and their spouses. Choose a policy that includes indemnity coverage for the cost of defending actions against the association and specifies that the coverage limit does not include the defense costs; otherwise, legal expenses could eat up most of the coverage. Boards should also be aware that the D&O coverage typically offered to community associations does not cover non-monetary claims for board election challenges, architectural review decisions, rules enforcement, and the like. A mono-line or stand-alone policy is more expensive, but it will cover these non-monetary claims.

Property Insurance: Property damage claims are more common than liability losses. It is not uncommon for boards to set insured loss caps intentionally too low to reduce their premiums, but it is also because boards may not know the value of their community. "Guaranteed replacement cost" coverage is hard to find today. However, most policies do include an automatic inflation adjustment provision, which increases the policy limits annually to reflect increases in area building costs. Boards should have the community periodically appraised and review to be sure the association's policy includes the inflation trigger and that the cost benchmarks the insurer uses are reasonable. Be sure to add coverage for any additions or improvements made since the existing policy was issued.

Fidelity Insurance: Fidelity insurance should be issued in the association's name with the property manager obligated under the association's policy. This format will cover a theft by the management company principals as well as by the property manager. The management company will have its own insurance, but that will typically cover the property manager only – it will not cover a theft perpetrated by the management company's owners.

For more information see our Mulcahy Cheat sheet, Insurance, Protecting the Association & Board of Directors, found on the Publications Tab or our website.