



insurance

What every association and property manager needs to know about directors and officers liability

sc **Stu Cohen****Somers Agency**

Despite good intentions, community association boards are being sued with increasing frequency. In California alone, experts estimate that 75% of community associations are involved in a legal dispute. The good news is, affordable Directors & Officers Liability Insurance is available. It protects the association and board members from lawsuits resulting from actions or decisions made while serving. Depending on

the actual policy, it can also protect actions in the capacity as property manager. The bad news is that many associations do not have adequate protection.

Consider these facts...

An association board spends \$1 million defending itself against a resident alleging that a special assessment was too high and inequitably distributed.

In a dispute over a fence, a community finds itself facing legal fees of \$61,000.

In an argument over a \$500 pair of drapes, both the association and the homeowner paid more than \$15,000 in legal fees.

The limit of insurance on a directors & officers policy is the amount of money the insurance company will pay for any single claim, and/or

all claims reported in a policy year. Limits vary from policy to policy (usually ranging from \$1 million to \$5 million) and these limits may be extended by many commercial umbrella policies. While choosing the "right limit" depends on the association's individual situation, it has been extremely rare for any directors & officers claim to go over the \$1 million mark.

Directors & Officers**Liability Insurance Checklist**

Make sure the policy provides coverage for:

- The association as an entity;
- Past, present, and future board members;
- Property manager;
- Builders and developers serving on the board;
- Individuals working at the dis-

cretion of the board (volunteers, committee members, etc);

- Provides coverage for defense costs that is in addition to the limit of liability and not subject to a deductible;

- Includes coverage for prior acts;
- Provides defense for both monetary and non-monetary claims;

- Covers defense costs associated with breach of third-party contract claims;

- Contains broadly defined protection for claims related to employment practices such as wrongful dismissal termination or discharge, and sexual harassment; and

- Enables the association to choose their own counsel.

Having the right Directors & Officers liability policy is critical, however every association should be

encouraged to:

- Elect board members who are serious and understand what their responsibilities will entail;
- Provide training for all board members;
- Make sure all board members have a good understanding of the association's bylaws and all other governing documents;
- Retain association counsel and hire experienced professionals if decisions are outside the board's comfort zone;
- Require new residents to read and sign-off on the bylaws and other regulations when they move in;
- Provide a mechanism that enables residents to address problems or grievances—communication can keep small issues from becoming big ones;
- Review bylaws, and other governing documents regularly to ensure they are up-to-date;
- Keep good records and accurate board minutes;
- Maintain a complaint log that includes details on how you responded; and
- Keep emotions and personalities out of the equation.

According to Distinguished Programs (an insurance provider who worked with Stu Cohen in preparing this article), here are the most frequent Directors & Officers liability insurance claims:

Breach of Fiduciary Duty

- A board member approves a certain color for the entire condo association, but his unit gets a different one.

- Officer elects to hire the services of his brother-in-law's pool maintenance company without disclosing the information to the board.

Breach of By-Laws

- Not enforcing rules and regulations with a neighboring unit that failed to submit plans for improvement prior to making changes.

- Failing to obtain the requisite number of votes prior to hiring a contractor to do some work.

- Failure to provide access to books and records.

Assessment Disputes**Discrimination**

- Selectively restricting use of association facilities

- Approving a front yard fence for one unit and denying an application for the same fence to another unit

Wrongful Employment Practices

- Wrongful termination

- Sexual harassment

- Unfair hiring practices

The Directors & Officers liability insurance policy is a very inexpensive way to protect the association and its board.

Stuart Cohen is founder, principal of City Building Owners Insurance Program and Somers Agency, New York, N.Y.

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