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Protecting *Your* Association

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HOA Volunteers & Insurance

By **Chris DiNino**, LaBarre/Oksnee Insurance Agency

The efforts of volunteer board and committee members support the functionality of community associations. Association governing documents, rules & regulations, and state law clearly define the roles and responsibilities of appointed volunteers. Communities with volunteers should obtain the required insurance coverage to protect themselves from an unforeseen incident involving a volunteer or from a decision made by a board member which may result in a lawsuit.

California Civil Codes and CC&R'S require all associations to carry specific insurance coverage types and to maintain minimum levels of liability insurance. In addition California Law requires that community associations with employees purchase Workers Compensation insurance. Workers Compensation insurance covers medical and disability expenses related to work-related illness and on-the-job injuries for employees. Associations that do not have employees are not required to carry this coverage, but should purchase an "if-any" Workers Compensation policy. The "if-any" policy should cover volunteer related incidents that are regularly excluded in the General Liability (GL) section of insurance policies. General Liability policies include coverage for personal injury

or property damage incidents occurring within the community, but may not extend coverage to include employees or volunteer workers. An association may be forced to pay compensation benefits to volunteers who become injured while performing work on behalf of the association.

This exposure might include an association that, due to budget constraints, "in-sources" light maintenance work or special projects rather than hiring a contracted vendor. The maintenance duties might include a Board Member changing light bulbs and emptying trash cans, an appointed committee of owners tackling a drought tolerant re-landscaping project, or perhaps the utilization of an appointed volunteer who happens to be a licensed electrician to fix a malfunctioning intercom system. Coverage may also extend in an incident as common as a volunteer slipping and falling at a walk through. This association should purchase a policy offering voluntary compensation for all board members, committee members and any volunteers working on behalf of the association via an official motion of the Board of Directors.

The very inexpensive "if-any" Workers Compensation policy protects the association and management company from injured volunteers seeking compensation. The policy should also provide protection in the event a contractor has improper cover-



Requirements

age or allows its Workers Compensation insurance to lapse and one of its employees is hurt while working for the association. Court decisions have shown that associations and management companies may be responsible for a contractor's employee that is injured while performing work for an association. In one case, the financial responsibility of medical and disability benefits for a contractor's employee was to be shared equally between the uninsured contractor, the property management firm, and the association.

It is recommended that associations that do not have employees hire licensed and properly insured contractors. There may be a situation where an overzealous volunteer believes the association expanded their volunteer responsibilities beyond an administrative capacity. If this volunteer, who believes he/she is working at the direction of the board, is injured, the board may be held responsible for the medical and disability compensation.

Another type of insurance to protect community associations from lawsuits is Director's & Officer's Liability, often referred to as D&O. D&O protects the association and board members from lawsuits resulting from actions or decisions made, against claims alleging loss arising from mismanagement, and/or wrongful acts. A wrongful act means any breach of duty, neglect, error, misstatement, misleading statement, omission or other act done or wrongfully attempted by the association. Persons insured under Director's & Officer's liability should include the Directors and Officers of the Board; Past and Present, Employees, Committee Members, Volunteers, the Manager or Management Company, and anyone who may act on behalf of the board. It is important to verify that the definition of insured in your policy includes those individuals.

Over the past several years, claims against Director's and Officer's of community associations have increased in number as well as severity. Common D&O claims include the Board's failure to adhere to by-laws, the Board's failure to properly notice elections or count votes/proxies, challenges to decisions made by the architectural review board, questions or challenges regarding easements, the boards failure to maintain common areas, and defamation of a member by the board.

Insurance coverage varies from insurance company to insurance company. It is imperative that Boards know exactly what coverage may be excluded from their association insurance policies and endorsements. It is ultimately the Board's responsibility to ensure that its association's insurance policies provide the correct coverage and endorsements. To alleviate fears of inadequate coverage, use the services of a CAI Member HOA Insurance Agent or Broker when placing coverage for your community. [↑](#)

Use the following checklist to determine if your D&O Policy is sufficient.

- ✓ Does your policy provide 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 discretion of the board (e.g., volunteers, committee members, employees, etc.)
- ✓ Does your policy provide defense for both monetary and non-monetary (defense) claims?
- ✓ Does your policy cover defense costs associated with breach of first and third party contract claims?
- ✓ Does your policy cover discrimination for state laws including race, gender, age, etc?
- ✓ Does your policy pay on your behalf so you don't have to wait to be reimbursed?
- ✓ Does your policy provide coverage for defense costs that is in addition to the limit of liability and is not subject to a deductible?
- ✓ Does your policy contain broadly defined protection for claims related to Employment Practices Liability, such as wrongful dismissal, discharge, termination and sexual harassment?
- ✓ Does your policy include coverage for full prior acts with no retroactive date?
- ✓ Does your policy enable you the option to choose your own counsel?



Chris DiNino, a Sr. HOA Insurance Specialist at LaBarre/Oksnee Insurance Agency, has been a member of CAI for over 7 years and holds the prestigious CAI CIRMS Insurance Designation. LaBarre/Oksnee Insurance, a full service independent insurance agency, has developed into one of the leading agencies in Southern California specializing in comprehensive insurance protection for community associations for over 24 years. Four months ago Chris moved from San Diego to Los Angeles to serve the needs of the Los Angeles and Ventura HOA Communities.