

Writing Condominium and Homeowners' Association Insurance

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Florida is - hands down - the single largest market for community association insurance in the nation. It is estimated that the state has over 65,000 community associations, and there is no slowdown in sight. Although condominium and homeowners' association insurance may be a demanding and difficult line to write, it can be rewarding, both in its own right and as an entrée to present other products to community residents.

First, Know the Risk

As insurance professionals, our first obligation is to understand the risk. Condominium and homeowners' associations are legal entities similar to other commercial risks. However, association risks are also unique. They entail a group of individual members, many unsophisticated, with their own individual and separate legal interests, who share common legal interests with the other members of the association. The common interest can be as simple as a set of paint-color guidelines for a group of 20 homes to a complex set of conditions, covenants, and restrictions (CC&Rs) for a 20-story, 200-unit high rise with multiple shared amenities.

Notwithstanding their complexity, these entities have an identifiable common denominator: they are legal entities normally set up as not-for profit corporations, usually with an elected board of directors providing oversight and direction. As legal entities, they have articles of corporation (legal formality), by-laws (the operating manual), and covenants, conditions, and restrictions (the association rules).

These documents and the management of the community association are not absolute, however. What many association boards do not realize is that, even they follow the association's governing documents to the letter and intent of the rules, if the documents are contrary

to state laws and regulations, they may find they have placed themselves and their association in jeopardy. In a legal battle, the board will be presumed to know the law. In Florida, these rules can be found in 2000 Florida Statutes, Title XL Real and Personal Property; Chapter 718 Condominiums; 719 Cooperatives; 720 HOAs.

The Association Puzzle Pieces

In developing an insurance package to protect the association and its board, the place to begin is with a thorough understanding of the scope of the community association itself. The natural place to start is with the existing insurance products and coverage program. Get as complete a history as you can, going back several years.

After thoroughly reviewing the existing risk and current coverages, the second step is to review the association's governing documents with the intent of identifying the insurance requirements. Bear in mind that these documents are crafted by the developer, and may simply contain cookie-cutter language not formulated in the best interests of the specific association.

Once you are sure you understand the requirements of the governing documents are satisfied that they are appropriate to the association, you must determine if they comply with state requirements. Governing documents created years, if not decades ago, are probably outdated from a legal compliance standpoint. As an insurance professional, you will be presumed to know what the governing documents and the state laws say, or don't say, with respect to insurance requirements in the event of litigation.

If you lack experience in the area of community association insurance, then this is the time you become an expert: seek a community association insurance professional, a community association legal professional, and join the corresponding industry trade groups that will give you the resources you need.

Analyzing the Pieces

A current reserve study is the key to analyzing the property exposure for a community association. If an association does not have a study or is outdated, then you should recommend that the association obtain one. This will identify the exposures, the condition of the exposures, and the life of the elements within the scope of the study. This tool enables the association management team; normally the board of directors and the community manager, to properly maintain the association's physical and real property assets. This, in turn, will obviate many of the other potential issues that can arise among the individual association members.

The next step in analyzing the property exposures depends on whether it is a condominium where the individual association members share the dwelling or a single-family homeowners' association. Again, this is where the association's governing documents become critical. For a condominium association, you must know the extent of the association's governing documents require the master policy to provide coverage. This is generally broken down into four options:

Bare Walls – the association is only responsible for the inside of the drywalls.

Single Entity – the association is responsible for betterments and improvements, as set forth in the original built plans.

All In – the association is responsible for the unit owners' betterment and improvements.

Silent – the governing documents have no express requirements.

Understanding the extent to which the master policy must provide coverage can help you advise the association as to what it may recommend that individual unit owners carry in their individual policies, especially with respect to improvements and betterments coverage.

The property puzzle also includes items that tend to be problematic in many community associations:

- **Property Value** – appraisals (due to the requirements of Citizens Property Insurance. This is very often available).

- **Replacement Coverage** – actual cash value, full replacement cost, or guaranteed replacement cost.
- **Building Ordinance** (critical for older buildings).
- **Loss of use or extra expense coverage.**
- **Flood, windstorm, and earthquake.**
- **Boiler/machinery and mechanical breakdown.**
- **Special Form (all-risk); broad form; basic form.**
- **Out Buildings, Inland Marine, and other coverages unique to the risk.**

General Liability Insurance

As agents, we are familiar with general liability policies. We see these policies daily, and many of us can recite the ISO from definitions from memory. However, do not let this institutional knowledge lull you into a false sense of security. The community association has clear (although not complicated) issues. Again, you need to look to the governing documents for any express requirements, and compare them to any statutory requirements.

First, you should determine if the definition of “insured” includes the real estate manager. Many of these associations hire community managers, and most of the associations agree to “indemnify” the managers. Personal injury coverage should be included. Anyone who lives in the world of community associations knows that the issues of defamation, invasion of privacy, and wrongful eviction offense become issues much more than we would hope.

While most associations do not have employees, workers' compensation exposure must also be considered. Similarly, most associations do not have auto exposure, but this is another risk that must be evaluated. Finally, the general liability policy should include, if appropriate, Host Liquor Liability, Non-Owned/Hired Auto, and Fire Legal Liability.

Directors & Officers Insurance

The association is a legal entity managed by a board of directors. To convince the best individuals to

sit on these boards, one must provide them the best and broadest coverage.

D&O coverages vary greatly from one carrier to another. Although this is a generality, it appears that most D&O endorsements in package policies do not provide adequate coverage for today's community associations. A comprehensive D&O policy should cover the following:

- Defense of monetary and non-monetary claims.
- Defense of failure to maintain or to obtain insurance.
- Defense of third-party contacts.
- Full prior acts coverage.
- Definition of insured includes: Past, present, and future directors and officers; committee members; volunteers; employees; including leased employees; independent contractors; spouses; and domestic partners.
- Discrimination coverage, including third-party discrimination.
- Personal injury coverage, including defamation, wrongful eviction, and invasion of right of privacy.
- Employment practices coverage.
- Property manager included within definition of insured.
- Consent to settle clause, preferably with soft-hammer clause.

The exclusions in a D&O policy create a gap in coverage in the event that the association has employees and provides a "defined benefits plan," sometimes referred to as the ERISA exclusion. This gap is filled with a somewhat misleadingly titled policy known as a "fiduciary" policy. As we know, the key duty of the board is fiduciary policy. However, a fiduciary policy is really for the purpose of filling the gap of the referenced exclusion.

Fidelity & Crime Insurance

The challenge of the fidelity/crime coverage is twofold. First, many package policies include sub-

limits of employee dishonesty coverage. Second, the corresponding premiums are so low that many agents do not have the patience to spend time on the product.

One thing to keep in mind in that this coverage is very often a moving target. This is a first party coverage, and what is being insured is what the association "owns." In this regard, accounting must be done to determine what the association had in all accounts and investments. The association should also be cognizant of windfall deposits such as insurance proceeds and the collection of special assessment that go beyond the normal fee accumulation of associations.

The best association fidelity/crime policies contain the following coverages:

- Employee theft.
- Forgery or alteration.
- Inside the premises – theft of money and securities.
- Inside the premises – robbery or safe burglary of other property.
- Outside the premises.
- Computer fraud.
- Funds transfer fraud.

Umbrella Liability Insurance

The umbrella liability policy is becoming a much more important part of the community association puzzle as our society become more litigious. There are a couple of keys to the umbrella coverage. First, what limits are sufficient? Second, what is the umbrella policy actually covering? Again, many people do not look closely at the coverage because they are convinced that the umbrella policy will never be triggered.

What must also be kept in mind is that limits in and of themselves are not sufficient. Most umbrella policies are "following-form" policies, meaning they follow the terms and conditions of the underlying scheduled policies. If those policies do not provide adequate coverage, then the umbrella is just proving higher limits of inadequate coverage. In addition, umbrella policies also include their

own exclusions that may be in addition to the underlying policies. Specifically, be cautious that they do not exclude D&O, EPLI, or coverage for managers.

Conclusion

While no article can completely replace an agent's due diligence in knowing the risk and the industry, hopefully this article will provide a starting point for agents looking to add this niche to their book of business. It is never too late to master a new market.