

# Questions & Answers

## Regarding Insurance For Community Associations

### **Does our Directors and Officers “D & O” insurance cover only those who are actually directors and officers?**

You must check the policy. Better policies have broader coverage that includes former directors, committee members, and even volunteers who work for the Association. Some carriers now provide coverage to Association managers under the Association’s D&O policy. Make sure that every-one working on the Association’s behalf is defined as an “insured” under the policy.

### **Who pays the deductible when an owner makes a claim covered under the Association’s property and casualty insurance policy?**

When property belonging to an individual owner is damaged, the loss may be covered under a property insurance policy purchased by the Association. When this occurs, the Association will typically make the claim for damage to such property; and the Association will be named as a payee on the proceeds check because the Association is the party to the insurance contract. The Association will receive a check for the amount of the claim less the deductible. Before the Association can require an individual owner to absorb the loss of the deductible on the claim, the policy designating who is responsible for the deductible should be set forth in the Association’s governing documents, preferably in the recorded covenants (“CC&Rs”).

### **Will the Association’s insurance cover damage to an owner’s personal property?**

An Association’s property insurance generally will not cover an owner’s moveable personal property, although some association property policies may cover unit fixtures such as carpeting, cabinets and installed appliances. Owners should be notified annually that they should procure coverage for their own property.

A general liability policy protects the Association where it is legally obligated to pay for physical damage to an owner’s personal property. The issue usually arises when an item the

Association must maintain (e.g., the roof) fails and results in damage to an owner’s property (e.g., furniture, carpeting). Although some courts have ruled that an Association would not be liable to the owner absent negligence in maintaining the roof, other courts have held that the Association’s obligation under the governing documents to maintain the roof would render it liable for any damage caused by its failure, even if the Association were not negligent.

### **How does the Board know what to insure?**

First, read the governing documents, since they may make certain insurance mandatory. Second, read the statutes for the insurance required to qualify for limitations on the Association’s and owner’s liability. Third, itemize everything the Association owns or must repair or maintain (called insurable interests). Fourth, consider all available types of insurance and evaluate whether they are appropriate for your Association as part of a prudent insurance package (e.g., fidelity bond, workers’ compensation, D&O, earthquake, flood, etc.) Finally, look at all available options under your current property and liability coverage and evaluate them in light of your Association’s particular needs. Talk to an experienced Community Association insurance agent.

### **What is the individual owner’s responsibility for insurance?**

Look first in the Association’s governing documents to determine what responsibilities individual owners have for procuring insurance, if any, as the individual owner’s responsibility for insurance will vary depending upon the type of Community Association involved. In Associations where individual owners are responsible for maintenance and repair of the building structure, the governing documents may require each owner to obtain specific types of property and casualty insurance. If the Association maintains and repairs unit structures, however, there may be no insurance requirement for individual owners. Moveable personal property (contents) is typically never covered by the Association, although, as indicated above, some Association policies may provide coverage for certain

fixtures such as carpeting and built-in appliances. Individual owners should procure liability insurance to protect them against their own negligence and other conduct, and for injuries to others which may occur within their own unit or exclusive use areas. Owners also need their own coverage for alternate housing, if the unit is not habitable after a casualty loss, as this is usually not covered by an Association’s master policy.

### **Our property is insured for its “cash value.” Is this good coverage?**

No. Coverage for “full replacement cost” offers better protection. It provides the cost of actually replacing what is damaged or destroyed. “Cash value” is the purchase price less depreciation. When older property is destroyed, you receive only its depreciated value, which is almost always less than the actual cost of replacing it.

### **Our Association signed a contract, agreeing to indemnify our landscaper if he is sued. Will our insurance cover this?**

Probably not. If the landscaper is sued for something due to the landscaper’s conduct, the Association’s liability policy might defend and indemnify the landscaper. Most policies, however, exclude “contractually assumed liabilities;” i.e., liabilities you have voluntarily assumed in a contract. You should consider an “endorsement” (a supplement to the policy) providing such coverage, especially if such a clause appears in the contracts with several of your vendors. The insurance carrier may be unwilling to issue this endorsement, so check with the carrier before signing any contract containing an indemnification obligation.

### **Is the Association required to disseminate information about its policies to the membership?**

Yes. Civil Code Section 1365 requires an Association to distribute information annually to the members about its property, general liability, earthquake, flood and fidelity policies. Included must be policy information on the

name of the insurer, type of insurance, policy limits of the insurance and amounts of the deductible. The Association must also notify members of any cancellation or significant changes in its policies.

### **When an owner makes a claim that involves an actual or potential lawsuit against the Association, must the Association always tender it to the insurance carrier?**

Unless the governing documents require otherwise, the Association has the discretion to decide which claims to tender. However, unless the claim is relatively small, or less than the deductible, the decision must be made carefully. The better practice is to tender all claims, even if the claim is small or less than the deductible. First, small amounts can become large amounts if, for example, additional damage is discovered, or repair estimates are revised, or costs of defending are considerable. Second, do not withhold tendering under the assumption you can do so later. Insurance companies can reject late claims, especially if the delay has prejudiced the carrier. An owner request for alternative dispute resolution (e.g., mediation) might seem of little consequence at the time it is made but could later result in an expensive lawsuit. Do not withhold tendering just because a small claims case is involved, as you may have to pay the claim yourself and/or incur legal fees to appeal an adverse small claims judgment. The result of any court proceeding is uncertain, so never expose the Association to financial risk by withholding or delaying a tender just to save a few dollars on next year’s premium. Consider adopting a policy of tendering all claims, whether or not a lawsuit has been filed, unless there are substantial and compelling reasons not to do so. Finally, tender claims to your D&O carriers if you know of any facts and circumstances that may give rise to a claim. Most D&O policies are “claims made,” and if you wait until there is an actual lawsuit, it may result in no coverage, especially if the Association has changed carriers before the actual lawsuit is filed.