

# WHERE TO BEGIN?

## A SOLID STRATEGY PUTS AN ASSOCIATION'S INSURANCE PIECES IN PLACE: PART I

by Joel W. Meskin, Esq., CIRMS

**EDITOR'S NOTE:** *I doubt anyone will argue with the observation that association insurance can be a complex and often perplexing puzzle for the board, which is why we're devoting space to the topic in multiple issues. In the November 2012 issue, author and attorney Joel W. Meskin wrote on "The Community Association Insurance Puzzle". In this issue, Mr. Meskin begins a two-part series describing a strategy that will help you, your board and your association's professional specialists put the puzzle pieces in place. The series will conclude in the May 2013 issue.*

*It was mid-morning on a Monday when I received a phone call. The young man on the other end of the phone was not quite sure where to start. He was not sure whether he should feel foolish for having accepted the position as president of his condominium board at the special election. The former president of 10 years had sold his unit and retired to Florida. Amongst the stack of papers the former president left him were portions of insurance policies - some current, some old, some naming old management companies, and the names of two different insurance agents. The young man, whose only significant investment, was his condominium unit, asked what he should do to evaluate the association's insurance program.*

First, after I listened to the young man's story I congratulated him for acknowledging the issue confronting him. Second, I told him that he was in fact ahead of the game, because I usually get this call as a result of an association being confronted with a large claim for which they have no idea if there is coverage. That circumstance is the basis of a very different article.

I told the young man to get a pen and paper and to take notes. For the remainder of the telephone call, I described to him the details of a basic association insurance audit. I admonished him, however, that this audit as a board member, which within the board's fiduciary obligation, is only the beginning; it should also be completed in conjunction with the appropriate community association professionals, such as a community association insurance agent, attorney, reserve specialist, accountant and last, but not least, a community association manager. Like any other specialist we may choose to engage, it is imperative that you confirm their expertise, in this case, their expertise in community associations.



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## GOVERNING DOCUMENTS

The first step in auditing the association's insurance program is to determine what the association's governing documents require. The governing documents will generally include: Articles of Incorporation (or declaration of trust); bylaws; and the Covenants, Conditions & Restrictions (CC&Rs). In addition to the basic documents, there may be amendments to the documents and there may be items reflected in board minutes reflecting insurance decisions. Once the insurance requirements are identified, it must be determined whether the requirements are appropriate for the association. On occasion, the insurance requirements set forth in the governing documents are part of a boilerplate set of documents. This may ultimately depend on a professional's advice.

## STATUTORY OBLIGATIONS

Virtually every state has a statutory framework applicable to community associations. This could be a specific state condominium act or law governing common interest developments. In the alternative, the association may be subject to the state's laws governing corporations.

## EXPOSURE EVALUATION

Before you can fully appreciate whether the insurance policies in force are appropriate for the association, you need to understand what constitutes the association's insurable interests. Again, this should be done in conjunction with a professional.

One place to begin is if the association

has a current reserve study. Reserve studies are very often required by either statute or the governing documents. Unfortunately, many associations ignore this requirement. This is probably one of the most valuable tools for maintaining the value of the association by identifying the life span and anticipated repair and replacement requirements of the association. It should be noted that there are many services that specialize in community association reserve studies, and once the initial investment is made, the follow-up updates are generally very reasonable. What the study does from an insurance standpoint is identify the key elements of the association that may be subject to the risks for which the insurance is being procured.

The list in the sidebar on the right is not intended to be an exhaustive list, but it involves items for which there is a potential exposure for which the association has an insurance interest or potential liability.

*(EDITOR'S NOTE: Mr. Meskin's article will be concluded with Part II in the May issue where he discusses how to put together an "insurance schedule").*

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## Items at Risk for Exposure:

### *Building*

- The condominium building itself
- Club house
- Pool house

### *Out Buildings*

- Storage sheds
- Laundry buildings
- Gate house

### *Garage Common Areas*

- Association controlled roads
- Sport courts
- Playgrounds
- Beaches
- Pools
- Golf courses
- Boat slips

### *Mechanical Exposures*

- Elevators
- Boilers
- Pool equipment
- Vehicles
- Bank Accounts
- Operating funds
- Investments
- Reserve funds

### *Employees*

### *Commercial Exposures*

### *Contractual Obligations*

- Hold harmless and/or indemnity provisions
- Leases

### *Association Office &*

### *Equipment*

### *Board of Directors, Committees and Volunteers*

### *Special Events or Activities and Volunteers*