



# Covering Your Bases

## The Value of Loss Assessment Coverage

by Joel W. Meskin, Esq., CIRMS ♦ Featured in The New Jersey Cooperator, August 2004

I just attended my monthly association meeting where our board advised our members that our homeowners association had just been hit with a \$1,500,000 judgment resulting from a skateboarding accident in our association-owned parking lot. That news was tragic enough, but unfortunately, the really bad information was to follow.

Our association only had \$1,000,000 in general liability coverage for this incident. Accordingly, the remaining \$500,000 of the judgment will have to be satisfied via a special “loss assessment” levied on the association’s membership. With only 10 members in our association, each member will be assessed \$50,000 apiece. My neighbor sitting next to me said, “Thank goodness I have loss assessment coverage.”

I turned to my neighbor and asked, “What’s that?” After all, I said, “My insurance broker told me I have full cover.” As I found out, however, the “full coverage” I was told I had, did not include loss assessment coverage, which pays on an association member’s behalf their share of an assessment charged against all members as a result of a covered loss. A loss assessment policy would cover the \$50,000 assessment set forth above in most cases – assuming that the association had proper insurance in the first place.

As specialists in the area of community association insurance, we provide coverage to thousands upon thousands of community associations nationwide for their directors & officers (D&O) liability coverage. However, it never ceases to amaze us that association members are still confused as to what legal costs and settlements the association is responsible to cover on their own. Although this might seem obvious to many, not all consumers are sophisticated, and what you as an association member must be is an advocate for yourself and your position. This is not as difficult

as it sounds. At a minimum, if you are buying insurance for your condominium, cooperative apartment, or single-family home in an association, you must ask the insurance agent some basic questions. Loss assessment coverage falls into this category of insurance that will absolutely need what is not provided within the association coverages. This is necessary whether you are in a condo, co-op, or single-family home.

### **When considering purchasing a loss assessment policy, you must keep in mind the following:**

- This is coverage “YOU” purchase from your insurance company and has nothing to do with the association’s insurance policy.
- Although this is coverage that you purchase, it is contingent on the association having proper coverage in place. When you live in a community association, you have chosen to share duties and obligations with others. Thus, you cannot blindly sit by and be completely confident that you are fully protected.
- Not all loss assessment coverages are created equal. Specifically, just because your policy includes this coverage does not mean you are fully protected. For example, is it limited to a minimal amount such as \$1,000? If so, are higher limits available, and if so, how much? Some carriers provide coverage as high as \$50,000.
- In New Jersey, the law is such that the same level of loss assessment coverage may not be necessary as in some other states. Certain states like New Jersey provide laws that to some extent protect individual association members from being found personally responsible if their association maintains certain basic levels of insurance coverage. The question is how much coverage the association has in relation to damages assessed.

As indicated above, most loss assessment coverage is triggered where the item would have been covered under the association policy terms and conditions, but



there were insufficient limits. Accordingly, if it would not be covered under the association policy because: (1) it was excluded, (2) the association only provided defense and non-indemnity coverage, or (3) the association policy lapsed.

**We Recommend the Following:**

- Make sure your insurance professional has fully explained to you what your exposure is as a member of a community association.
- Speak with your neighbors to find out whom they use for their homeowners coverage and whether they have loss assessment coverage.
- Determine your comfort level when determining how much loss assessment coverage you need.
- Make sure your association has all the insurance it properly needs, not only to protect the association, but also to ultimately make sure you are adequately covered.