



Community Association Governance

Protecting Community Association Assets

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Most Common D&O Claims

1. Challenges to the board's failure to properly make, adhere, or apply association by-laws, CC&R(s), and board-adopted rules.
2. Challenges to association elections, election procedures, vote counts, or improper election notices.
3. Allegation of discriminatory application of association rules, including allegations of harassment by rule enforcement.
4. Challenges to board's exercise of authority.
5. Challenges to the board or independent manager's refusal to make association documents and records available to association members.
6. Challenges to board decisions resulting in property damage or bodily injury.
7. Challenges to assessments and association and management company collection procedures.
8. Challenges to architectural application decisions.
9. Breach of third party contracts.
10. Allegations of personal injury offenses, including defamation and invasion of the right of privacy.

Trending D&O Claims: Emotional Support Animals, AirBNB, Rental Restrictions, Cyber Liability and Data Breach, Drones

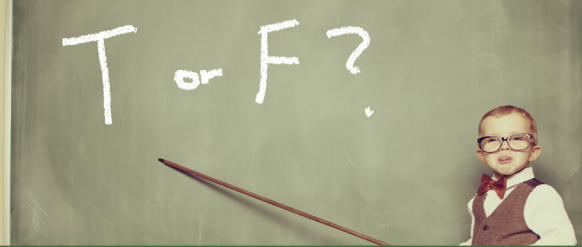




Community Association Directors & Officers Quality of Management Worksheet

- ☐ 1. Has each board member read the association by-laws?
- ☐ 2. Has each board member read the covenants, conditions & restrictions?
- ☐ 3. Has each board member read all the association rules and regulations?
- ☐ 4. Are board members prohibited from handling issues individually outside board meetings without board delegated authorization?
- ☐ 5. Have all board members complied with Board Member Certification, if required by State?
- ☐ 6. Does the board out-source collections to a collection firm or law firm?
- ☐ 7. Does the association have an annual audit of its financials?
- ☐ 8. Does the board consult legal counsel before terminating employees, if any?
- ☐ 9. Does the board seek legal counsel before entering into a contract greater than \$5,000 or longer than a year?
- ☐ 10. Does the board seek legal counsel before terminating a contract greater than \$5,000 or longer than a year?
- ☐ 11. Does the board only hire managers with licenses required by the state, if any?
- ☐ 12. Does the board require that any managers hired have professional liability insurance?
- ☐ 13. Are all meetings open to all owners, except if involving litigation and personnel issues?
- ☐ 14. Does the board maintain meeting minutes approved as to form and content?
- ☐ 15. Does the board use Roberts Rules of Order or other parliamentary rules for meetings?
- ☐ 16. Does the board maintain copies of all contracts?
- ☐ 17. Does the board maintain copies of all insurance policies?
- ☐ 18. Does the board meet directly with its insurance professional at least annually?
- ☐ 19. Does the board have a reserve study?
- ☐ 20. Does the board have a written policy regarding the funding of the reserve study?
- ☐ 21. Is the association a member of the Community Association Institute ("CAI")?
- ☐ 22. Do any board members attend CAI classes or other relevant educational presentations?
- ☐ 23. Does the board have a written procedure for unit owners to share concerns?
- ☐ 24. Are board decisions issued in the name of the board and not individual board members?
- ☐ 25. Does the association use an accountant to handle the association financials?
- ☐ 26. Does at least one board member review actual bank statements each month?
- ☐ 27. If the association does not do an annual audit, does it do a Review or Compilation?
- ☐ 28. Does the board have a bidding process for contracts over a certain price?
- ☐ 29. Does the board/association have a disaster plan?
- ☐ 30. Has the board participated in board training?
- ☐ 31. Does the board have a new board member orientation program?
- ☐ 32. Does the board require certificates of insurance directly from the vendor's agent?
- ☐ 33. Does the board survey board members annually to identify association goals and priorities?
- ☐ 34. Does the board have an infrastructure plan? (Committee initiatives and goals)?
- ☐ 35. Does the board have a FAQ regarding association life that it provides to prospective buyers?
- ☐ 36. Does the board have a procedure for welcoming new residents?
- ☐ 37. Does the board have a succession plan or any idea how to groom new community leaders?
- ☐ 38. Does the board review contracts each year and meet with vendors to maximize performance?
- ☐ 39. Does the board have a written Conflict of Interest Policy in place?
- ☐ 40. Do board members sign a Community Association Board of Director's Code of Ethics Agreement?





Board of Directors Test

#	QUESTIONS	TRUE	FALSE
1	The association board of director's authority is set forth in the articles of incorporation.		
2	The association by-laws set forth how (a) directors and officers are elected; (b) notice requirements for meetings; (c) who is eligible to vote; (d) the terms for officers and directors.		
3	Original by-laws can be amended to reflect the changing needs of the association.		
4	The procedures for amending the by-laws require a unanimous vote of the association membership.		
5	State law requires that board members read the by-laws prior to taking office.		
6	By-laws take precedence over state law.		
7	The procedures set forth in the By-laws are only advisory and need not be followed.		
8	Actions of a Board can be invalidated if the board was not properly elected or formed.		
9	A Not For Profit community association is not held to the same standard of a For Profit board of directors.		
10	The board of directors' can not be sued if it chooses not to enforce the rules set forth in the CC&Rs.		
11	The board of director's is only responsible for claims asserting monetary damages.		
12	The board does not need to read the CC&Rs or the By-laws. That is what a management company does.		
13	The CC&Rs take precedence over state law.		
14	The CC&Rs need to be updated periodically to comply with new changes in the law.		
15	The board is not responsible for conduct of the management company and or its employees.		
16	The CC&Rs do not apply to board members if he or she has not read the CC&Rs and By-laws.		
17	The board of directors are required to adhere to all rules promulgated by the hired property managers.		
18	The advice of an attorney creates immunity from liability for the board.		
19	The board cannot be sued if the community association fires or harasses an association employee.		
20	All D&O policies provide coverage for the failure of the board to obtain or maintain insurance and the only issue is to purchase the least expensive policy, because all policies provide the same coverage.		
21	All D&O policies provide coverage for breach of contract claims by a third parties/business partners.		
22	The Board of directors, the association, or association volunteers cannot be sued for defamation, because they have volunteer immunity.		
23	The board of directors has no exposure if there is a data breach of association information, even if the association information was the result of the management company being breached.		
24	A board or its association is only liable for damages up to the amount of its insurance limits.		
25	If the board of directors has insufficient insurance limits, or deficient coverage, the association members cannot be held responsible as long as the policy purchased was the cheapest policy offered.		
26	Any duly elected board member can make unilateral decisions throughout the association as they deem necessary.		

For answers contact:

Does your
D+O Policy
Cover These
Claims?



Have Your Insurance Broker Call McGowan!!

- ☐ A vendor sues the board and the association for breach of contract?
- ☐ A unit owner sues to compel the board to purchase insurance?
- ☐ The community manager sues the association for slander, seeking emotional distress damage?
- ☐ A unit owner sues because a volunteer sexually harasses a child at the pool?
- ☐ The association's doorman sues for wrongful termination?
- ☐ An outgoing board president sues to challenge the validity of an election?
- ☐ A unit owner sues to prevent the removal of trees in common areas?
- ☐ The property manager is sued for an alleged unauthorized entry into a unit owner's condominium?
- ☐ Unit owner sues board for its declination of emotional support dog request.
- ☐ Unit owner sues board for new rental restrictions disallowing AirBNB.
- ☐ Unit owner sues board for an order preventing the association from using drones claiming that it is an invasion of the right to privacy.



To Tender,
or
Not to Tender?
That is the question...

Directors & Officers Liability – Claims Made Reporting Policy

If you are asking the question, tender! Report to the carrier. Do not pass go!
(Caveat: a carrier is not obligated to pay any defense fees and costs before a matter is reported.)

Do the allegations constitute a “claim”?

Definition of a Claim:

Not all definitions of claims are created equally. Some are very narrow, such as “the service or a suit.”

Claim Commonly Means...

1. Written demand for monetary damages or non-monetary relief (caveat: what is a written demand?);
2. Civil Proceedings;
3. Criminal Proceedings; or
4. Formal civil administrative or regulatory proceeding

...against an Insured for a Wrongful Act.

If it is a “claim,” then what?

Most D&O policies are claims made and reported policies that if a “claim” is received by the “insured” or the “insured” is aware of the “claim,” it must be “reported” to the carrier within the “policy period” or the “discovery period,” if applicable.

If it is not a “claim,” then what?

If there are facts and circumstances that have not matured into a “claim,” but give rise to a potential claim, then submit notice of those facts and circumstances to the carrier. If it later matures into a “claim,” then most policies will “relate” back to the prior policy.

CAUTION: Failure to report a “claim” to the carrier within the policy period or discovery period (if applicable) = NO COVERAGE. END OF STORY!



Fraud Prevention Checklist



QUALIFIED PROFESSIONALS

- ☐ Are background checks performed on all employees, board members, volunteers and independent managers who handle association funds?
- ☐ Is an accounting professional retained to set up or confirm that proper checks and balances as well as financial protocols are in place?
- ☐ Are employees adequately supervised?
- ☐ Are all vendors and contractors vetted by the board?

FINANCIAL ANALYSIS

- ☐ Is an audit, compilation or review of the association's financials conducted annually?
- ☐ Does the association have and regularly update a reserve study??
- ☐ Are financial reports reviewed monthly
- ☐ Are bank statements reconciled monthly, or at least quarterly?

CHECKS & BALANCES

- ☐ Is the same individual making deposits and reconciling the accounts?
- ☐ Is more than one signature required on each check, or is a rubber stamp used for check payment?
- ☐ Are original invoices required and marked "paid" with every check request?
- ☐ Are all PIN numbers, access code and bank signature cards secure and updated regularly?
- ☐ Are blank and unused checks kept in a secure location?
- ☐ Are duplicate statements sent directly to two separate board members?
- ☐ Are checks issued in numerical order?

INSURANCE

- ☐ Does the Association have fidelity (employee dishonesty) coverage with the directors and officers included in the definition of "employee" or added as a "designated agent"?
- ☐ Does the Association have third party crime coverage that parallels the fidelity coverages?
- ☐ Does the Association require that any retained independent management company have sufficient employee dishonesty and crime coverage?



Condominium Unit Buyer's Checklist



- ☐ By-laws: Obtain a copy of the condo association by-laws, the association's operating manual (who has authority to do what, who is a member, who is eligible to vote, and how to elect board members).
 - ☐ CC&Rs: Obtain a copy of the CC&Rs (covenants, conditions, and restrictions), the association rules (what can you put on your door, how loud can music be, who can live in the unit, can you have pets, etc.)
 - ☐ Delinquent Assessments: How many association unit owners are more than 20 days delinquent in paying assessments? What percentage of those delinquencies are more than 60 days past due? (If unit members are delinquent, someone has to cover the shortfall [the remaining current members].)
 - ☐ Pending Lawsuits Against the Association: Are there any lawsuits or administrative proceedings (i.e. EEOC or fair housing) pending against the association? If not, have there been any lawsuits in the past 5 years? (Do a civil index check in the county court.)
 - ☐ Pending Lawsuits Against Unit Owners: Does the association have any lawsuits pending against any unit owners or vendors?
 - ☐ Reserve Study: Does the Association have a reserve study? If not, why?
 - ☐ Funded Reserve Study: If the association has a reserve study, is it funded? If so, what percentage is it funded?
 - ☐ Reserve Study Update: When was the reserve study last updated?
 - ☐ Capital Improvements: Does the association have any substantial capital improvements or repairs planned within the next 24 months? If so, how is it going to be funded (reserves, special assessment, loan?)
 - ☐ Special Assessments: Does the association currently have any special assessments other than normal monthly dues/assessments? If not, are there any special assessments planned in the next 24 months?
 - ☐ Insurance: Who is the insurer for the condo association master policy providing coverage for the building and providing coverage for the general liability coverage? Who is the agent for the association? Is he or she a Community Insurance Risk Management Specialist?
 - ☐ Appraisal: When was the last time an appraisal was done to determine the appropriate amount to insure the condo association property? What was the appraised value?
 - ☐ Umbrella Insurance: Does the association have an umbrella liability policy? If so, what are the limits? Does the umbrella policy provide follow form directors and officers' coverage?
 - ☐ Directors & Officers Insurance: Who is the insurer for the directors and officers' liability insurance?
 - ☐ Employee Dishonesty/Crime Insurance: Does the association have a fidelity (employee dishonesty/crime) policy? If so, what are the limits? Does the limit equal at least the total of all operating accounts, reserve accounts, and 3 months assessments?
 - ☐ Employees: Does the association have any of its own employees? If yes, does the association have workers' compensation insurance? If so, does the association have an employee manual?
 - ☐ Property Manager: Does the association use an independent property or community manager? If so, what is the name of the management company and who is the key contact? Is the manager on site or is it a portfolio manager?
 - ☐ Property Manager Indemnification: If there is an independent management company, is there a written management agreement? Is there a written management agreement, is there a mutual indemnification provision or just unilateral provision running in favor of the management company?
 - ☐ Property Managers Errors & Omissions: If there is an independent management company, does it have its own errors & omissions policy?
 - ☐ Property Managers Fidelity/Crime Insurance: If there is an independent management company handling the association's funds, does it have a fidelity crime policy?
 - ☐ Association Financials: Does the association have audited financials? If yes, provide a copy of the most current financials. If not, does an independent accountant handle the finances? If not, who handles the finances?
 - ☐ Positive Fund Balance: Does the association's current balance sheet show a positive fund balance?
 - ☐ Collections: Who handles the association's collections? Association? Attorney? Manager?
 - ☐ General Counsel: Does the association have general counsel? If so, who?
 - ☐ Elections: Has there been a challenge to the board election within the last 24 months?
 - ☐ Developer: Is the developer on the board and/or in control of the board?
- Miscellaneous notes:





Insurance for the Mandatory Homeowner or Condominium Association

■ The Board of Directors is the Association's Risk Manager with the Fiduciary Obligation to Protect the Association's Assets

- Each board member must put the interest of the Association above individual interests
- The board must do its homework (it cannot delegate this to others)
- The board must engage a Community Association Insurance Specialist

■ The Board's Homework

- Reserve Study/Appraisals – the best tool to analyze the association's common elements
 - Understand the appropriate/realistic valuations of the common elements
 - Understand the association's level of risk tolerance
- Governing Documents – Are there insurance requirements?
 - If yes, do they make sense for the association or do they require updating?
 - If yes, does the existing insurance program comply?
 - The required types of insurance
 - The required limits of insurance
- State Statutes
 - Are there any statutory insurance requirements?
 - If yes, do they conflict with the governing documents?
- FHA Requirements – is the association required to comply with FHA requirements?
- Understand the Association Insurance Puzzle – so you know the questions to ask?
- Has the board done an audit on the potential liability exposure of the association?
 - Are any association members doing things that increase potential liability for the association (neighborhood watch, swim teams)?
 - What activities and events take place in the association (socials, clubs)?

■ Select a Community Association Insurance Specialist to Develop the Insurance Program

- Shop for the Community Association Insurance Specialist (licensed insurance agent), not the product
- How long has the insurance professional been involved with community associations?
- How many associations does the professional handle, including ones like yours?
- Obtain references to contact at neighboring associations handled by the specialist
- Ask what they need to analyze your program (if they do not ask for your governing documents, if they do not ask to review your existing policy, or if they do not ask if you have a reserve study, say thank you and interview the next candidate)
- Ask how many management companies they work with at this time
- Ask if they have any community association or relevant insurance designations
- Ask if they participate in any industry organizations, such as the Community Association Institute
- Ask what role they will play in the event of a loss
- The professional must present to the board in person – end of story!
- Ask what the community association insurance specialist will do once the program is put together; i.e. explain the requirements of each policy in the event of a loss, provide education

■ The Community Association Insurance Puzzle – It May Include Some or All of the Following:

- Property Coverage
- General Liability Coverage
- Directors & Officers/Employment Liability
- Fidelity/Crime Coverage
- Workers Compensation

■ Property Insurance

- Adequate Building Limits – Appraisals
- Replacement Cost?
- Sewer Backup?
- Building Ordinance?

■ General Liability

- Governing Document Requirements?
- Statutory Requirements?
- Limits, Limits, Limits?
- Can Liability be shifted? Association v. Individual Unit Owners?

■ Directors & Officer's Liability (This policy differs significantly from carrier to carrier)

The most common D&O claims – are the board and association covered for these claims?

- Challenge to elections
- Parking space disputes
- Challenge to assessments
- Breach of Third Party Contracts
- Architectural review challenges
- Defamation
- Discrimination
- Employment Issue

■ Fidelity (Employee Dishonesty)/Crime (non-employment theft)

- Make sure the appropriate limits are obtained (all accounts + investments + 3 months operating expense)
- Make sure director & officers and volunteers are within the definition of “employee”
- Make sure an independent property manager/management firm is covered as an “employee” or designated agent

■ Umbrella Liability Coverage

- What limits do you need to sleep at night?
- Limit alternative = special assessment

- Auto Liability
- Earthquake/Wind/Flood
- Homeowners/Condo Unit (HO6)
- Special Event Coverage
- Cyber Liability/Data Breach

- Boiler/Machinery or Equipment Breakdown?
- Flood; Windstorm; Earthquake?
- All Risks or Specified Perils?
- Deductibles?

- Deductibles the cost benefit analysis?
- Definition of Insured?
- Personal Injury Coverage?

Beware of Key Exclusions

- Non-monetary claims
- Insured v. Insured exclusion
- Personal Injury/Defamation
- Breach of Contract
- Insurance Claims
- Fraud/Punitive Damages

Community Association Insurance Puzzle

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General Liability Coverage	Umbrella Coverage	Directors & Officers Liability Coverage	Employment Practices Liability	Auto Liability Coverage
Workers Compensation Coverage	Property Coverage	Fidelity Coverage	Crime Insurance	Fiduciary Coverage
Earthquake Insurance	Wind Coverage	Flood Insurance	Cyber Liability	Data Breach Response Services
Special Event Coverage	Condo - Coop - SF HOA - Townhouse - Master Policy	Single Family HOA Homeowners Policy	Condo Unit Owner HO6 Policy	Coop Shareholder Policy
Professional Service Provider's Professional Liability Policy	Additional Insured Status on Contractor GL Policy	Bank Loan	Association's Assets	Special Assessment

Blue = Third party liability coverage – defense and indemnity in claim or suit against the insured.

Red = First party coverage where the Insured's property is damaged or stolen.

Gold = Statutory coverage required by the state.

Green = Package Policy, which may include both first-party and third-party coverage.

Pink = Self-Insurance options.

Purple = Risk Transfer to a non-insured.



Insurance Solutions for Technology Cyber Liability/Data Breach Response Services

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Risk/Coverage	Cyber Liability	Data Breach Response Services	Directors & Officers	Fidelity/Crime	General Liability
Information Security Failure Liability	X		X*		
Regulatory Defense & Penalties		X			
Defamation	X		X*		X*
Media Liability	X				
Data Breach (Electronic or Hard Copy Data Breach)		X			
Unit Owner Notification Expense		X			
Credit Monitoring Expense		X			
Restoration Expenses		X			
Cyber Extortion/Ransomware Assistance		X			
Ransom Demands					
Crisis Management/Public Relations Costs		X			
Security Incident Investigations		X			
Anti-Fraud Protection for Unit Owners		X			
Social Engineering/False Pretense/Phishing				X***	
Forensic Expenses		X			
Compliance Assessment Fees		X			
Hacking Association Bank Account - and Illicit Wire Transfer				X****	
Drones (Crash/Invasion of Privacy)			X*		X
Unauthorized Board Meetings (i.e. WebEx)			X*		
Misplaced Laptop with Personally Identifiable Information	X		X*		
Manipulation of Computer Programs by Employees and Outside Third Parties	X	X		X**	
Challenged Decision of Board Due to Unauthorized Use of Technology			X		
Cyber Bullying	X		X*		
CAM Created Exposure Due to Breach of CAM System		X			

*If the Association D&O or GL policy is silent regarding alleged cyber liability wrongful acts or occurrences, there may be coverage, primarily a defense obligation.

**Some court cases have found coverage available under the computer fraud portion of the Fidelity/Crime Policy.

*** The Fidelity (Employee Theft)/Crime policy must specifically include Social Engineering/False Pretense Coverage

**** The Fidelity/Crime policy must include Wire Transfer Fraud or Funds Transfer Fraud





Special Event Insurance

McGowan Program Administrators provides a simple and inexpensive risk management solution for Community Associations that rent out their clubhouses, pools and other common area amenities: *Special Event Insurance for your Community Association*.

EASY AS 1,2,3...

1. Insert link in your community association special event rental agreement.
<https://communityassociationsinsurance.com>
2. Renter goes to link and answers a few simple questions and pays for the coverage online.
3. The association contact person receives a certificate of insurance online.

What types of events are contemplated?

- Meetings, seminars, Boy Scout or Girl Scout events
- Birthday, anniversary, and graduation parties
- Weddings, Bar Mitzvahs, and family reunions
- Classes, swimming lessons sponsored by third parties

What is covered?

- Bodily injury; property damage and Personal Injury Offenses
- Liquor Liability
- Hired and Non-Owned Autos
- Medical Pay

Who is covered?

- The Association
- The person(s) and/or the Entity renting the facility

Active Shooter/Workplace Violence Insurance

EXCLUSIVE National Program!

MPA's **Crisis Management & Response Programs** NOW offers four NEW CRISIS Products in addition to Active Shooter Insurance. **McGowan's Crisis Management & Response** now offers: **Active Shooter/Deadly Weapon/Workplace Violence Insurance, Global Crisis Response, Cyber Data Breach Liability, Employment Practices Liability, Sexual Misconduct Liability**

PRODUCT OVERVIEW

We will consider **ALL CLASSES** of business, here are some examples:

- Events: Parades/Concerts/Festivals
- Healthcare: Hospital/Nursing Homes/Clinics
- Education: High Schools/Universities
- Religious: Churches/Synagogues
- Retail: Malls/Shopping Centers
- Hospitality: Hotels/Resorts
- Entertainment: Concerts/Events
- Govt. Public Entities: County/Cities/Townships
- Condominium Associations/Public Works

CARRIER

- Rated "A / XV" by A.M. Best

TERRITORY

- All 50 States

PRODUCTS/LIMITS

ACTIVE SHOOTER / WORKPLACE VIOLENCE

- Primary Liability: \$1MM-\$25MM
- Business Income: \$1MM-\$25MM
- Property Damage: \$500,000
- Crisis Services: \$500,000
- Counseling Expense: \$500,000
- Funeral Expense: \$500,000
- Global Crisis Coverage

GLOBAL CRISIS COVERAGE

- Primary Liability: \$1MM – \$20MM+
- Med Evac / Expense, Kidnap & Extortion

SPECIAL FEATURES

SPECIAL FEATURES & COVERAGES (Active Shooter/Workplace Violence Only)

- Primary 3rd Party Liability Coverage, for lawsuits arising from Active Shooter/Deadly Weapon Events.
- Primary 1st Party Business Interruption Expenses Coverage with Loss of Attraction
- Property Damage Included
- Vulnerability Risk Assessment and Active Shooter Safety Action Plan Seminar provided
- Post Event Crisis Management / Crisis Counseling / Funeral Expenses Coverage
- 24-hour Crisis Management Hot Line Service to help the organization respond immediately
- Call Center, Emergency Communications, Recovery Plan & Arranging Counseling and Funeral Services
- No Exclusion for Vehicles/Employees/ Terrorism/Act of Burglary/Under 3 casualties/Over 50 casualties



The Blessing and Curse of Technology in Community Associations



Cyber Liability and Data Breach Insurance

Technology is changing how we manage our Community Associations – Is your Community Association prepared for these changes?

McGowan Program Administrators announces its **Cyber Liability and Data Breach** solution specifically tailored and priced for Community Associations. **Simple and Affordable – We heard you!**

- Information Security and Privacy Liability
- Regulatory Defense and Penalties
- Website Media Content Liability
- PCI Fines, Expenses and Costs
- Privacy Breach Response Services - Notification and Credit Monitoring
- Legal Services, Computer Expert Services, Public Relations and Crisis Management Expenses



McGowan Program Administrators

Joel W. Meskin, Esq. CIRMS, CCAL Fellow, MLIS

jmeskin@mcgowanprograms.com

800-545-1538

mcgowanprograms.com

