

Risk Management Guide

Benefit of risk management for associations

The directors and officers that oversee the association should be thought of as risk managers who defend against, mitigate and avoid errors that may negatively impact their community or neighborhood, and ultimately their own property.

Obligation of owners

Each unit owner/tenant and their respective guests are governed by, and must comply with, the declaration of restrictive covenants. These are the documents that give rise to the association itself and the association by-laws (“governing documents”).

Being a board member

The board of directors is a body elected to develop policy and/or conduct the day-to-day business of the association. Typically, the board will be comprised of several members, some being elected to an officer position (e.g. President, Secretary or Treasurer). The officers make up the executive board and have overarching duties of managing the board’s activities.

All board members have a fiduciary responsibility to the members of their association. Board members must always act in the best interest of the association while avoiding self-dealing and any improprieties.

Who is an insured under the Travelers policy

Insured persons is defined in the policy as any person who was, now is, or shall become (1) duly elected or appointed directors, trustees or officers of any insured organization; or (2) employees, members of duly constituted committees or volunteers of any insured organization that is a non-profit entity.

What is a claim?

A claim is defined as: (1) a written demand for monetary relief or non-monetary relief; (2) a civil proceeding commenced by the service of a complaint or similar pleading; (3) a criminal proceeding commenced by filing of charges; or (4) a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document, against an insured for a wrongful act.

What to do in the event of a claim?

Potential problems can often be defused before resulting in a claim. Frequently, the claim can be avoided altogether with a prompt and courteous response.

Time is always of the essence when a claim is received. The complaint or demand letter, and all relevant documentation, should be immediately forwarded to a representative of Travelers. This will ensure that all appropriate steps are taken to respond to the claim and protect the insureds’ interests.

If you think it is a claim, it probably is.

How does Travelers respond upon receipt of a claim notice?

It’s worth noting that all HOA/Condo directors and officers claims are centrally located and processed in Hartford, CT, by a dedicated team of experienced claim adjusters.

Once a claim has been submitted to the agent, a letter from Travelers will be sent to your agent within twenty-four (24) hours. A claim number and the assigned adjuster’s contact information will also be provided by a dedicated team of experienced claim adjusters that specialize in handling community association claims exclusively.

The adjuster will determine a coverage position and make an initial assessment of the claim and determine any potential liability. Claim investigation may be necessary to determine coverage, legal liability and damages for a claim.

The adjuster will contact the agent by phone within forty-eight (48) hours, at which time a claim evaluation will be discussed.

If it is determined that coverage exists, panel counsel in your geographical area will be assigned. Panel counsel law firms that specialize in defense for directors and officers liability coverage for this class of business are utilized for claims handling. These firms provide their written coverage position in a formal letter within thirty (30) days of assignment.

Reservation of rights

Travelers is obligated to notify an insured when it reserves the right to deny a claim, pending the investigation. A reservation of rights will outline what is covered under the policy in writing. It states what panel counsel firm will be used and will alert coverage concerns which may not be covered under the policy.

This guide is an abstract on trends that could potentially affect risk management issues. It is based on recent developments in community association litigation. No opinions or advice is being given, and readers should seek counsel of legal professionals within their jurisdiction.



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Community Association Directors & Officers Risk Management Guide

Congratulations on purchasing a Travelers community association management liability policy.

This brochure will provide an overview of our product and will address some potential issues that you may encounter.



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Four major types of claims:

1. Breach of contract

A breach of contract can occur when a binding agreement or bargained for exchange is not honored by one or more of the parties to the contract. In the community association context, this most frequently arises in contracts for improvement or repair of association property.

When an association receives a claim from a third party, a prompt response and good faith evaluation of the problem can pave the way for an early settlement of the dispute. If the third party's design or workmanship is deficient in any way, they should immediately be placed on notice. In this regard, it is advisable to keep photographic or video record of any potential problems.

Breach of contract example

The association has a contract with a service provider (e.g. landscaper) and believes the provider has not fulfilled their duties as defined in the contract. As such, the association wishes to terminate the contract and opts to not pay the landscaper for completed work. The association sends notice of termination to the landscaper, ending the relationship, and subsequently hires a replacement landscaper.

2. Breach of fiduciary duty

The association's board of directors must exercise a degree of care and loyalty required of a fiduciary officer or director of a corporation. Courts often apply a "reasonableness" standard in testing the validity of actions taken by the board in regards to association management.

Breach of fiduciary duty example

An association has delinquent owners and has requested counsel to foreclose on the unit for non-payment of assessments. The board president is an investor and wants to purchase the foreclosed units at the sale. The president requires information regarding the time and place of the sale so he can attend and bid.

He requests the information for his benefit and is not planning on advising any other board members or owners in the association of his intent to purchase. The association president purchases a unit at an association foreclosure. Another owner makes a claim against the board president for breach of fiduciary duty.

3. Violations of CC&R's

The covenants, conditions and restrictions (CC&R's) are the governing documents that dictate how the homeowners association operates and what rules the owners — and their tenants and guests — must obey. These legal documents might also be called the bylaws, the master deed, the house rules or another name. These documents and rules are legally enforceable by the homeowners association, unless a specific provision conflicts with federal, state or local laws.

Violations example

An association has restrictions regarding color schemes of homes. An owner desires to build a home and paint it brown. The association approves the design and colors as they are in compliance with the CC&R's because they are in harmony with other home colors in the subdivision. A homeowner subsequently decides on painting the home pink, and they do so without notifying the association. The association advises the owner that the color was not approved; and the owners subsequently sue for arbitrary, discriminatory and capricious treatment in that they believe there are other colored homes in the neighborhood that are not on the approved color list.

4. Employment practices liability

Coverage for defense costs and damages related to various employment-related claims, including allegations of wrongful termination, discrimination, workplace harassment and retaliation deriving from the employer-employee relationship.

Employment practices liability example

An association employs personnel to man the gate and security booth at the subdivision entrance. The association employs in excess of 20 employees and is therefore covered by the Age Discrimination in Employment Act [ADEA]. The association terminates a 72-year-old employee. All other gate personnel are considerably younger; and in response, the older security guard claims age discrimination.