



COMPARING INSURANCE QUOTES

As the market for community association insurance grows, the types of coverage offered in different policies can become very complex. Comparing quotes from different insurance agencies and companies can become confusing.

This issue of *Insurance Focus* outlines the major community association property and casualty insurance areas and highlights important coverages in each area. In addition, we have included a handy checklist to use when reviewing your association's current insurance or when shopping for new insurance.

Where should we start?

Community association managers and board members should define their association's insurance needs and expectations by working with an insurance professional knowledgeable in establishing insurance and risk management goals relative to community associations. Just as community association managers and board members partner with their attorneys and accountants to effectively manage their community associations, so too should they partner with their insurance agent to effectively manage the unique risks they face.

Just as community association managers and board members partner with their attorneys and accountants, so too should they partner with their insurance agent.

Carefully review state and local statutes under which the community was developed and the recorded documents of the association. Community associations owe it to their members to obtain appropriate insurance for their specific situations.

Property Insurance

In a sense, property insurance is the foundation upon which other coverages are built. Property insurance provides coverage for all buildings, structures, and personal property owned by the association. This will often encompass common property, parkland, woods, open spaces, recreational facilities, buildings, and sometimes portions of residential areas.

Replacement Cost Coverage

Accurate replacement cost valuation of property is essential. In some cases, the concern of accurate valuation can be eliminated or mitigated by purchasing guaranteed or replacement cost plus coverage. This coverage assures full value replacement, without regard to a coverage dollar limit.



Coinsurance and Agreed Amount

Coinsurance is a method of encouraging community associations to obtain insurance in amounts more nearly equal to the value of the property insured, usually specified at 80, 90, or 100 percent. It provides an incentive for adequate insurance-to-value by providing a rate credit for carrying relatively high limits to value. It provides for the full payment, up to the amount of the policy, of all covered losses if the insurance carried is at least equal

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to the specified percentage. However, if the community association fails to carry the necessary amount of insurance, it assumes a proportionate share of the loss.

Problems arise when community association buildings are insured for a smaller percentage than the coinsurance requirement. For example, if a policy includes a 100 percent coinsurance clause for a building only insured for 80 percent of its value and a loss of \$100,000 occurs, the association will only be able to collect \$80,000 or 80 percent because of the 20 percent coinsurance penalty.

To avoid this situation, an agreed amount can be worked out with the insurance company, where the association and the insurance company agree on a specific value for a building. This has the effect of removing the coinsurance clause/penalty.

Wind-Driven Rain

This option extends coverage for loss caused by rain, snow, sleet, ice, sand, or dust driven by wind that results in damage to the interior of buildings, regardless of whether damage to exterior of buildings is first sustained.

Landscaping

Many community associations invest substantial sums for landscaping. Cleaning up and replacing a single mature tree destroyed by wind or ice could easily exceed \$10,000, \$25,000, or even \$50,000. Because wind and ice are often not covered causes of loss, this could be an out of pocket expense for many community associations. Comprehensive land-

scaping insurance can cover damage to plants, trees, and shrubs caused by storms, theft, vehicle damage, and lightning.

Earthquake

From an actuarial standpoint, the possibility of an earthquake or volcanic eruption in the eastern part of the United States is relatively remote. However, the possibility of tremors or earth movement causing structural damage, broken windows, or broken pipes is real. Another reality is that most property insurance policies contain an exclusion pertaining to damage from earth movement. For that reason, some amount of earthquake insurance should be considered; it is fairly inexpensive and usually available as an endorsement to a property insurance policy.

Flood

Generally speaking, if a community association is located in a Special Flood Hazard Area (designated as A, AE, AH, AO, A1-30, A-99, V, VE, or V1-30 on a Flood Insurance Rate Map—FIRM), the association must maintain a master or blanket policy of flood insurance, with the premiums paid as a common expense.

Back-Up of Sewers and Drains

This option extends coverage for loss caused by back-up of sewers or drains, either from an internal or external force.

General Liability

In addition to protecting the physical property of the community association, associations must have commercial general liability insurance, which

is designed to protect the community association from a wide variety of liability exposures.

Unlike property damage, which can frequently be measured in dollar amounts, liability claims have no limits, other than those imposed by the courts. Juries, never known for their predictability, have sometimes awarded damages in amounts capable of bankrupting community associations.

Host Liquor Liability Insurance

Generally, community associations are protected by host liquor liability insurance coverage. Subject to the terms of the policy, this coverage will indemnify and defend the association against third party liability claims arising out of the serving of alcoholic beverages during association sponsored





events. This would also cover claims of causing intoxication to another person, serving a minor, or continuing to serve someone already under the influence of alcohol. However, host liquor liability insurance coverage will not protect the association if the alcoholic beverages are either directly or indirectly sold.

Aggregate Limits

Aggregate limits are often put on all coverages to specify at the outset of the policy term the total amount available for indemnification. This amount represents the most the company will pay for certain specified types of claims, during a specified period, regardless of the number of accidents or occurrences, persons injured or suffering property damage, or the number of claims that result. Normally this is over a 12-month period.

Products Liability

Products liability provides additional liability protection to the association that operates a restaurant or snack bar, conducts a picnic or bazaar, or operates vending machines, etc., where injuries may result.

Automobile Insurance

Automobile insurance is necessary whenever an association has employees who drive cars, trucks, or maintenance vehicles on association property or while carrying out association business. Hired car liability protects the association against liability from the operation of automobiles that it hires, rents, leases, or borrows. Non-owned automobile coverage protects

against liability caused by or arising out of the operation of autos that the association does not own or hire. Of course, any vehicle owned by the association should also be insured.

Garagekeepers' legal liability insurance is designed to respond when the association has automobiles under its care, custody, and control and when the exclusions of a typical comprehensive general liability policy fail to cover such situations. Typically, this occurs when valet parking is provided.

Community association managers and board members should define their association's insurance needs and expectations by working with an insurance professional knowledgeable in establishing insurance goals for community associations.

Fidelity Bonds (Employee Dishonesty) Insurance

A primary purpose of a fidelity bond or crime insurance is to indemnify the community association for loss of money, securities, or any property because of any criminal act, including fraud, dishonesty, forgery, theft, larceny, embezzlement, wrongful abstraction, willful misapplication, or misappropriation on the part of directors, officers, committee members, association employees, board members, and volunteers. Coverage can also extend to protect the association against criminal acts by an independent managing agent.

Secondary lenders require condominium associations to maintain coverage with a limit equal to at least three months of assessments plus current reserve funds.

Comprehensive Equipment Coverage Insurance

Comprehensive equipment (boiler and machinery) insurance is a form of property insurance that protects against financial loss from property damage, business interruption, and spoilage that is the result of sudden and accidental mechanical breakdown. It fills the gaps left by property insurance policies.

Coverage can extend to all pressure-driven, mechanical, and electrical equipment including circuitry. Most common equipment failures, such as broken gears, cracked or ruptured pipes (caused by freezing, etc.), and electrical motor burnout, generally are not covered by standard property insurance policies.

Coverage can be written for a specific item such as an air conditioner, or it can be written to cover a number of items on a blanket basis.

Directors and Officers Liability Insurance

Directors and Officers liability insurance is necessary to provide protection against allegations of mismanagement of common funds or policies. Typical claims include wrongful termination, sexual harassment, discrimination, and mismanagement of funds. The legal costs of defending against any of these charges can be staggering.

The scope of coverage provided by the various policies available in the insurance marketplace differs dramatically; thus, it is important to find the D&O policy that best fits your association. Some associations have indemnification agreements written into their by-laws, but not all states recognize these provisions. D&O insurance could protect board members against liability suits should the association fail to indemnify them. It can also protect employees and any committee members or volunteers.

When looking for D&O insurance, check the exclusion list and definition of insured carefully. Beware of any D&O policy that has an exclusion for prior directors and prior acts. Some policies only cover duly elected directors and officers; appointed board members are not covered. Many policies do not include coverage for association employees and committee members. Discrimination and employment practices liability are often excluded. If the policy has a participation clause requiring the association to contribute in a specified percentage of any loss payment, think twice about that policy.

Umbrella Liability Insurance

Umbrella liability insurance closes the gap between underlying limits of coverage and possible claims in excess of that coverage. In recent years, it has become common for businesses, associations, and individuals to purchase this type of coverage, partly because today's juries often award huge sums of money to litigants.

Umbrella liability insurance is tailored to each community association, and the risks covered are generally negotiated. Because no "standard" umbrella policy exists, it is important for a community association to work closely with an insurance professional in designing such a policy. Because of market forces, umbrella liability policies are becoming more expensive, and higher limits in some cases are more difficult to obtain.

Self-Insured Retention

A self-insured retention is similar to a deductible and applies to events that are not covered by the underlying



policy. For example, if an umbrella policy is subject to a \$10,000 SIR, a community association would be responsible for paying the first \$10,000 of a covered claim when the umbrella policy drops down to provide primary coverage.

Workers Compensation

This coverage, which provides benefits for employees that sustain injuries arising out of job duties on behalf of the association, may be required by state statute. Regardless of any statu-

tory requirement, we recommend that all associations purchase workers compensation insurance coverage.

Terrorism and Mold Terrorism

Primary insurers insuring commercial property and casualty losses in the United States now must make terrorism coverage available for any commercial line of property and casualty insurance covered. That coverage cannot differ materially from the terms and limitations applicable to other insured events under a policy. There is no restriction, however, on the rate that an insurer may charge for terrorism coverage, and there is no requirement that policyholders agree to accept such coverage.

An "act of terrorism" is defined as any violent act or act that is dangerous to life or property, that results in damage totaling at least \$100 million in the United States (or to a United States carrier, vessel, or mission), and that is committed by an individual or individuals acting on behalf of any foreign person or foreign interest as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States by coercion. Acts committed as part of a war declared by Congress are excluded from the scope of the definition.

Insurance companies are now required by law to offer coverage for certified acts of terrorism. Some broad policies cover both certified and non-certified acts.

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COMMUNITY ASSOCIATION INSURANCE COVERAGE CHECKLIST (PAGE 1)

Property

Name of Company
Replacement Cost
Bare Walls, Single Entity, or All-In
Building Limit
Personal Property Limit
Loss of Income Limit
Deductible
Additional Deductibles (water/hail/wind)
Back up of Sewers and Drains
Wind Driven Rain
Increased Cost of Construction Limit
Demolition Limit
Contingent Liability Limit
Earthquake Limit
Deductible
Flood Limit
Deductible
Landscaping
Sub-Limits
Open or Named Perils
Glass
Sub-Limits
Open or Named Perils
Accounts Receivable Limit
Valuable Papers and Records Limit
Pollution Cleanup Limit
Damage to Gutters & Downspouts
Due to Weight of Ice, Sleet, or Snow
Mold & Mildew Exclusion
Terrorism Exclusion

General Liability

Name of Company
Limits
Per Occurrence
Annual Aggregate
Medical Payments Limits
Per Person
Per Accident
Personal Injury
Advertising Injury

Host Liquor
Liquor Liability
Products Liability
Employee Benefits Liability
Limited Contractual
Independent Contractors Protective
Pollution
Mold & Mildew Exclusion
Terrorism Exclusion
Managing Agent

Automobile

Name of Company
Owned Automobile Limit
Non Owned and Hired Car Limit
Garagekeepers' Legal Liability Limit
Deductibles
Comprehensive
Collision

Fidelity Bond

Name of Company
Limit
Deductible
Any Criminal Acts
Directors and Officers
Board and Committee Members
Employees
Managing Agent (Employees and Owners)

Boiler and Machinery/Mechanical Equipment

Name of Company
Limit
Deductible
All Pressure Driven, Mechanical, and
Electrical Equipment Covered
Size or Capacity Restrictions

Directors and Officers Liability

Name of Company
Limit
Deductible



COMMUNITY ASSOCIATION INSURANCE COVERAGE CHECKLIST (PAGE 2)

Participation ClauseYes No
 Claims Made or Occurrence
 Prior Acts Coverage.....Yes No
 Non Money DamagesYes No
 Appointed Board MembersYes No
 EmployeesYes No
 Committee MembersYes No
 DiscriminationYes No
 Employment Practices LiabilityYes No
 Failure to Procure or Maintain
 Adequate InsuranceYes No
 Managing AgentYes No

Umbrella Liability

Name of Company _____
 Limit....._____

Self Insured Retention
 Extends Over General, Auto, D&O, & WCYes No
 Excess EPLIYes No
 Mold & Mildew ExclusionYes No
 Terrorism Exclusion.....Yes No

Workers Compensation

Name of Company _____
 All StatesYes No
 Voluntary CompensationYes No

Special Provisions

Owners are Additional InsuredsYes No
 No Contribution ProvisionYes No
 No Subrogation Provision.....Yes No
 No Control ProvisionYes No

RATING THE INSURERS—FINANCIAL SIZE

The A.M. Best Company is a recognized publisher of information concerning insurance companies. To enhance the usefulness of its ratings, A.M. Best assigns each letter rated (A++ through D) insurance company a Financial Size Category (FSC). The FSC is designed to provide a convenient indicator of the size of a company in terms of its statutory surplus and related accounts.

Many insurance buyers only want to consider buying insurance coverage from companies that they believe have sufficient financial capacity to provide the necessary policy limits to insure their risks. Although companies utilize reinsurance to reduce their net retention on the policy limits they underwrite, many buyers still feel more comfortable buying from companies perceived to have greater financial capacity. The ranges below are in millions of U.S. dollars.

FSCAdjusted Policyholders' Surplus

ILess than 1
 II1 to 2
 III2 to 5
 IV5 to 10
 V10 to 25
 VI25 to 50
 VII50 to 100
 VIII100 to 250

FSCAdjusted Policyholders' Surplus

IX250 to 500
 X500 to 750
 XI750 to 1,000
 XII1,000 to 1,250
 XIII1,250 to 1,500
 XIV1,500 to 2,000
 XV2,000 or greater



(continued from page 4)

Mold

From the insurance perspective, damage from mold is specifically excluded in most standard property insurance policies. Property insurance policies provide coverage for damages that are sudden and accidental. They are not designed to cover the cost of cleaning and maintaining a home.

However, if mold is caused as a direct result of a covered peril, such as a burst pipe, the policy can cover the cost of eliminating the mold subject to limitations. But mold caused by water from excessive humidity or condensation is a maintenance issue for the property owner, like rot and termite infestation, and generally is not covered by the policy.

To avoid confusion, many insurers are now inserting clarifying language or an absolute exclusion in their policies. Most major insurers have announced some form of coverage exclusion or limitation.

Environmental policies, which can include coverage for mold, are available, but unless the community association has a mold protocol in place, the policy will include language saying if a construction defect or maintenance causes the mold, the community association will not be covered. One issue with these policies is that maintenance is not clearly defined.

Miscellaneous Coverages

Electronic Data Processing Equipment

Special coverage forms are available to specifically cover electronic data processing equipment (EDP). These coverage forms provide much broader protection against loss of or damage to computers and other EDP equipment including hardware and software.

Fine Arts Coverage

Special coverage forms are available to cover fine arts items. If the association owns any items of intrinsic value such as paintings, sculptures, or antique furniture, we recommend that a fine arts floater be purchased to schedule specific valuations for these items. Current appraisals for any fine arts are needed in order to obtain a quote for this special coverage.

Underground and Aboveground Storage Tank Pollution Liability Coverage

If the association owns an underground storage tank (UST) or aboveground storage tank (AST), we recommend that a UST pollution liability policy be purchased.

Fiduciary Liability

Subject to the terms of the policy, fiduciary liability insurance protects the fiduciaries of employee benefit plans for sums they are legally obligated to pay as a result of an actual or alleged wrongful act or breach of their fiduciary duties. The policy can also provide coverage for defense expenses to defend a claim made against the fiduciary for an actual or alleged wrongful act.

For further information

For further information, please contact Steve Dickerson (703-205-8788 or Steve.Dickerson@usi.biz) or Theresa Melson (703-205-8753 or Theresa.Melson@usi.biz).

RATING THE INSURERS—FINANCIAL STRENGTH

The financial strength and stability of the insurance companies underwriting the policies is important. The A.M. Best Company is a recognized publisher of information concerning insurance companies. Best rates insurers based upon many factors. A high mark from Best indicates a strong, financially secure insurance company. A number of major carriers have been downgraded over the past several years, so it is important to know what the rating is. For the latest rating, access www.ambest.com. The following is a summary of the Best rating guide:

A++ and A+Superior	B and B-Fair	DPoor	FIn Liquidation
A and A-Excellent	C++, C+Marginal	EUnder Regulatory Supervision	SRating Suspended
B++ and B+Very Good	C and C-Weak		



ASK THE EXPERT

“Ask the Expert” is a regular column in Insurance Focus, featuring an interview with an expert about an important insurance issue facing community associations. This month our expert is attorney Thomas C. Schild of Thomas Schild Law Group, LLC in Rockville, Maryland. Mr. Schild has more than 20 years of experience in representing condominiums, cooperatives, and homeowners associations in Maryland and the District of Columbia.

Q: Do community association directors face potential legal liability for not obtaining adequate property damage insurance?

A: Among the most important responsibilities of a community association board of directors is to obtain adequate insurance to protect owners against financial loss arising from catastrophic property damage. For condominiums and cooperatives, this responsibility typically extends to the dwelling units as well as the common area of the buildings. For homeowner associations, the responsibility only applies to the common property (which might include buildings such as a clubhouse or recreation facility, but does not include individual dwelling units).

In fulfilling its responsibility to obtain adequate property damage insurance, the board must first understand the insurance requirements of state statutes and the association declaration and bylaws. State condominium law typically requires a board to obtain insurance against risks of direct physical loss commonly insured against “to the extent reasonably available.” Such laws sometimes establish a minimum amount of coverage or a maximum deductible amount.

In addition, the association governing documents for condos, co-ops, and homeowner associations will often specify the terms of required insurance on matters such as minimum coverage amount, ratings of insurance company, special endorsements, and maximum deductible amounts. The amount and terms of insurance a community

association must obtain are also influenced by the loan underwriting standards of Fannie Mae.

A board of directors that acts diligently in good faith and in a reasonable manner to obtain the required insurance coverage to protect against catastrophic loss will generally be protected against liability if the amount of insurance is not adequate to fully cover costs of repair or replacement. Community association boards may be shielded from liability for good-faith decisions by statute or the court-created “business judgment rule.” Protection for the board and individual board members is afforded under these legal principles where the board acts in good faith, reasonably, and without fraud, dishonesty, or incompetence. The association governing documents may also limit director liability in such circumstances.

Claims that a board has not obtained adequate insurance to cover property losses are generally not covered by directors and officers liability insurance policies. Therefore, to avoid potential liability for not obtaining adequate insurance, a board should carefully document its efforts to obtain insurance. Increase in cost is not sufficient reason to fail to purchase insurance that is “reasonably available.”

Board actions that demonstrate exercise of good business judgment include obtaining a professional appraisal of the property, consulting insurance professionals, focusing on protection against catastrophic loss, and informing owners and lenders of coverage and deductible amounts.