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Annual Insurance Coverage Self-Evaluation: A Check List for Association Board Members

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While we can anticipate certain risks that our communities are likely to face and set aside reserves to cover the situation when the risk becomes reality, we still must rely on insurance as an essential risk management tool. What we can do to lessen the blow of an unexpected loss or catastrophe, however, is take stock now of our community's insurance needs and examine if our coverage is too little, too much or just right. For peace of mind, you must do this before not after your association suffers a claim or incurs liability.

Most associations rely on management, working with knowledgeable insurance brokers, to determine the association's insurance needs; however, board members must familiarize themselves with their association's insurance requirements and insurance coverage options available in order to determine if their association's coverage is sufficient; in order to tender an insurance claim in a timely manner; and, in order to educate their homeowners about what the association's insurance policy does and does not cover, and how the owners can secure additional coverage for their personal property interests.

The following items should assist you in performing a meaningful insurance coverage evaluation for your community:

1. Communicate with your homeowners. Civil Code Section 1365 mandates annual disclosure of a summary of the association's insurance coverage. It is also helpful to have the association's insurance representative attend annual meetings to explain the coverage in place and answer the owners' questions. Advise the owners often that they should obtain their own coverage for personal property loss and any other available coverage not covered by the association's policy. Advise owners to inquire about loss assessment coverage that may cover them for an assessment levied under certain defined circumstances. Remember to advise owners whether there is coverage under the association's policy for relocation expenses in the event a loss requires the homeowners to move off the property. Finally, if relocation is not covered under the policy, advise the owners to seek relocation coverage in their own individual policies.

2. Educate your broker. Do not assume that your insurance broker is adequately familiar with the physical components of your property. Ask questions and describe the components unique to your association. Also, provide your broker with your governing documents.

3. Know the company that is providing your insurance. Your insurance carrier must be in good standing and California "admitted." Check your insurance company's "A.M. Best" rating which is a good indicator of the company's ability to pay out on claims.

4. “Replacement cost," "actual cash value" and "guaranteed replacement cost". For property damage coverage, note the difference between Actual Cash Value (“ACV”), which covers only the depreciated value of the property destroyed or damaged, and replacement cost coverage which provides for the full cost of replacement less reasonable deductible. Guaranteed re-placement cost coverage covers the full replacement cost of a building even if the building was insured for less than the amount of the loss.

5. "All risk" or "Named Perils." Many CC&Rs require “all risk” coverage. An “all risk policy" is broader and covers all risks except those which are specifically excluded. A “named peril” policy covers only those risks specifically named. All others are excluded.

6. Coverage for association personal property. Make sure your policy includes coverage for association personal property such as lobby furniture, recreation equipment, computers and other similar association property.

7. Association earthquake coverage. This requires either a significant policy endorsement or a separate policy.

8. Comprehensive general liability policy. A comprehensive general liability (“CGL”) policy insures your association for bodily injury or property damage claims. Additional coverage is available for personal injury (including humiliation and mental suffering) and advertising injury. Claims made within these categories of coverage include defamation, false arrest, and invasion of privacy.

9. Named insured and additional insured--who is covered under the policy. Determine who should be covered and make sure they are included in the definition of either the named insured or the additional insured coverage of the policy. Make sure the coverage insures association management, if your association is obligated to insure your manager.

10. D & O Coverage — What is it and who is covered. D & O Coverage insures association directors and officers from liability for acts committed while acting for the association. Civil Code Section 1365.7 sets the minimum coverage required in order to protect officers and directors from personal liability. Check coverage amounts carefully.

11. "Claims-made" versus “occurrence” policies. D & O policies are generally, "claims-made." They require that for a claim to be covered it must be reported during the policy period and the conduct giving rise to the claim must take place during the policy period. A general liability policy, by contrast, requires only that the claim be based upon conduct that occurred during the time the policy was in effect. D & O policies also differ from general liability policies in terms of what constitutes a "claim." What constitutes a claim under a D & O policy has a lower threshold. A threatened claim or intent to file a claim may be sufficient to require the association to notify the insurance company in order to have the claim be covered if a suit is eventually filed.

12. Know what acts and conduct and coverages are excluded under your association's policies. For example, D & O policies generally exclude from coverage intentional acts or acts outside a board member's scope of authority. Some D & O policies exclude any claim that involves property damage. Some D & O carriers allow you to obtain coverage for "prior acts" based upon acts of which you are aware that pre-dated the policies inception. In addition, with the high cost of General Liability coverage, some CGL policies can be more affordable if certain types of claims are excluded (i.e. plumbing leaks) or, for example, if deductibles for water damage claims are set higher.

13. Tail Coverage. If you change D & O carriers, obtain "tail coverage." The tail coverage extends the period of time during which a claim can be made under the prior policy. This coverage is critical when acts that took place during the prior policy period give rise to subsequent claims.

14. Determine whether there are any special coverages available. Determine whether your association should have special coverage not otherwise included in the above policies. These additional coverages may include fidelity bonds (to cover employee theft), and worker's compensation coverage. Ask your broker to review with you your community's needs in light of the specialty coverages available.