

## **Avoiding Liability When Providing Emergency Services and Disaster Preparedness to Your Community Association**

By Matt D. Ober, Esq., CCAL

In this post 9/11 world there is movement toward adoption of a national private sector disaster preparedness standard. Implicit in the adoption of such a standard is an obligation to provide adequate training for a comprehensive disaster preparedness plan, particularly for employers responsible for workplace safety. Here, we briefly examine to what extent an association may be obligated to provide a disaster preparedness plan for its residents and the benefits and risks inherent in doing so.

In general, an association is obligated to provide for the management, administration, maintenance, and operation of the community. Providing the community with emergency services does not fit easily within these categories. However, the ever-increasing drive to become the ultimate full-service community association, coupled with the growing reality that natural disasters and community-wide emergencies are more of an eventuality rather than a mere possibility, require our associations to recognize that at least some disaster management is required. The difficulty lies in determining how to prepare for a community wide emergency without exposing the association to liability.

In the area of emergency preparedness, a board must give full consideration to the consequences both of action and inaction. These considerations should include:

- The nature and extent of services the association should provide in responding to an emergency or natural disaster;
- The type of disclosure the association should make to the community in light of or in lieu of the emergency services to be provided;
- The type of disclosure the association should make to the community in light of or in lieu of the emergency services to be provided; and,
- The potential liability to the association for failing to act to prevent disaster.

In our current environment, natural disasters or community-wide emergencies may be unpredictable but not unexpected. To what extent does the expectation of a natural disaster or community-wide emergency obligate a board to provide emergency services or institute a disaster preparedness plan?

### **Limiting Liability by Qualifying the Nature and Extent of Emergency Service Available**

Case law that explores association responsibility vis-à-vis foreseeable criminal activity indicates that once an association undertakes to provide security service, homeowners develop a justifiable reliance that the association will protect them from criminal activity. To protect the association from liability, the limits of services provided must be clearly articulated to residents. The same precautions are required in the area of emergency services. For example, if the association elects to maintain emergency medical supplies on site, but not to administer emergency medical attention, the association must disclose that while a limited supply of emergency supplies are on hand, staff is not equipped to

administer first aid. Note that with recent legislation addressing defibrillators, associations may soon be required not only to provide the equipment but also to train staff to use it.

### **Facilitating the Dissemination of Disaster Preparedness and Emergency Services Information**

Among the many painful lessons learned from Hurricane Katrina is that many residents fail to adequately prepare themselves. In California, we are often reminded how overdue we are for a significant earthquake. Yet, how many of us have emergency supplies on hand? It is unrealistic to suppose that an association can amass emergency supplies to handle the needs of its residents. However, an important role an association can provide is to make available to the community vital information and resources from public service organizations and local, state and federal agencies.

This is not to suggest that the association gather and disseminate the information or organize the public awareness campaigns. Instead, through town hall meetings, newsletters or similar means, an association can tap into the resources of such agencies as the American Red Cross, FEMA, and local fire and police and serve as the conduit for information. The association should be careful to avoid endorsing a particular organization and instead look to community volunteers to organize such events. Empower residents to act and prepare. The goal is that residents should be better equipped to rely upon themselves in an emergency.

An association emergency policy and procedures manual may be appropriate, if not essential. It need not be elaborate but should provide basic contact information for various emergency situations. Phone numbers or web sites of emergency service providers, disaster relief organizations, local fire and police and nearby hospitals should be included. Identify emergency exit routes as well as the location of onsite emergency equipment such as fire extinguishers.

### **Liability for Failing to Act**

In certain circumstances, a board's failure to respond to or prevent a disaster may expose the association to liability. For example, keeping brush cleared from structures and streets is vital to protecting against anticipated or oncoming wildfires and providing access for emergency response vehicles. Regular maintenance checks of emergency equipment such as fire doors and fire extinguishers helps to ensure that safety features remain in good working order. The liability to the association for failing to carry out such routine maintenance in a timely manner can be as devastating as the damage.

Enforcement of homeowners' maintenance responsibilities is also essential. If governing documents require the homeowner provide brush clearance in advance of fire season, the association may bear responsibility for failing to enforce the owners' maintenance responsibility in the event of a structure fire. Consistent rule enforcement must be viewed as an essential element of an association's risk management.

### **Insurance Considerations**

No discussion about emergency services and disaster preparedness would be complete without the mention of insurance. Beyond the standard general liability insurance coverage, an association's decision to provide emergency services or a disaster preparedness plan may require increased insurance coverage to protect against the increased risks associated with such programs. Discuss with

the association's insurance agent the emergency programs the association is undertaking to determine if additional coverage is required or available for the proposed venture. When annually reviewing your association's insurance coverage, evaluate whether your association is adequately covered for hazards such as fire, flood or mudslides. These hazards may not be covered by the association's insurance policy; the absence of coverage for these events may require additional disclosure to the members so that they may be better prepared to handle the emergency.