



Liability Insurance Review

Presented by Jason LoMonaco
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Adequate Insurance in General

Policies Every Association Should Have:

- ✓ Property Casualty
- ✓ General Liability
- ✓ Directors & Officers Liability
- ✓ Crime/Employee Dishonesty
- ✓ Workers Compensation
- ✓ Cyber Insurance (check with your broker)
- ✓ Employment Practices Liability



QUESTION

What is
Directors &
Officers
Liability
Insurance?

ANSWER

Insurance for “wrongful acts”
and/or “decisions” of the
Association or its Directors.

It doesn't matter that the Condo
Act, the POAA or your documents
do not require D&O. You need it!

If you don't have D&O, *GET IT
TODAY!*



QUESTION

What is
General
Liability
Insurance?

ANSWER

Insurance for an “accident” or “occurrence” on Association owned property, or caused by the Association, that injures another person or damages their property.

The Condominium Act requires GL insurance!



Insurance For *Defending* Lawsuits

- **Commercial General Liability (CGL or GL)**
 - ❑ “Accident” or “Occurrence” Causing **Bodily Injury** or **Property Damage** (But not intentional acts)
 - ❑ Occurrence based (When did the event occur?)
- **Directors and Officers Liability (D&O)**
 - ❑ Wrongful Acts or Decisions that **do not** cause Bodily Injury or Property Damage (but not Willful Misconduct)
 - ❑ Claim based (When was the claim made?)
- **Liability Insurance pays for *Defense* not *Offense*!**



QUESTION

Will
Property/Crime
Insurance
Defend a
Lawsuit?



ANSWER

No!

- Property/Crime Insurance do not apply to claims made **against** the Association even if it involves the Association's property or concerns theft.
- Property/Crime Insurance is **1st Party** insurance to pay back the Association for damage to it's Property or Theft.
- D&O & CGL are **3rd Party** insurance to pay others for damage caused to them by the Association.



Defend, Indemnify & “Covered”

- Defend: Where the insurance co. will pay a lawyer and the costs of defending a lawsuit.
- Indemnify: Where the insurance company will pay the damages awarded to the Plaintiff (a/k/a pay the “loss”)
- “Covered:” Generally means “indemnify” when referring to a claim, or simply to whom the policy applies (i.e. **who** is “covered?”)





Are You “Covered?”

- Are They “Covered”?
 - Directors and Officers?
 - Community Manager/Management Company?
 - Committee Members and other volunteers? (D&O only)
 - Agents/Employees?
 - Spouses? (D&O only)
 - Condominium Unit Owners (GL only)
- Make sure ALL are “*insured*” under the policy
 - Check the definition of “Insured”
 - Ask: this may require a separate “rider” or “endorsement”



QUESTION

Are These
Defended
By D&O?

ANSWER

- FHA AND OTHER “DISCRIMINATION” CLAIMS?
 - CODE/REGULATORY VIOLATIONS?
 - NON-MONETARY RELIEF?
 - BREACH OF 3RD PARTY CONTRACT?
 - PUNITIVE DAMAGES?
-
- These will never be “covered” but a good D&O policy will pay to defend these types of claims.



The GREAT D&O Policies

- Community Association Underwriters of America (CAU)
- Travelers
- Great American Ins.
- CNA
- United States Liability Ins. Co. (USLI)

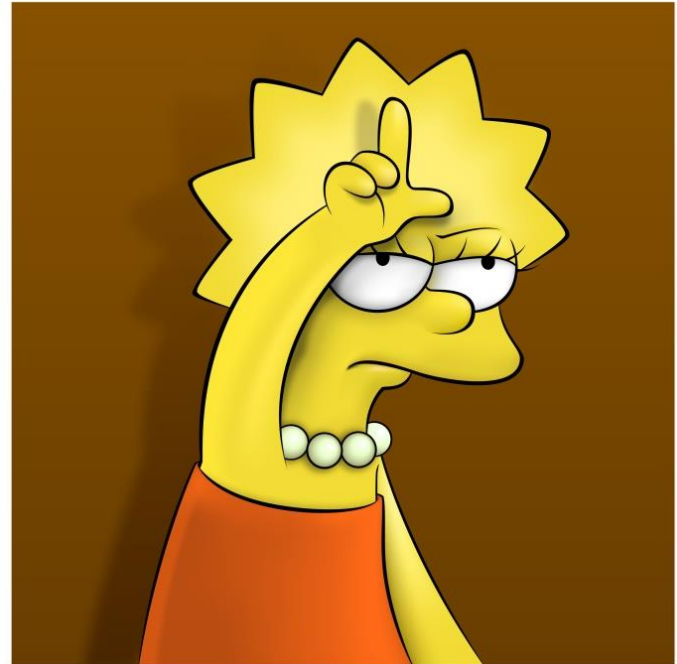




The Bad D&O Policies

- Auto Owners
- Nationwide
- Scottsdale
- Just about anyone else

❑ WHILE THESE COMPANIES MAY HAVE VERY GOOD PROPERTY AND CGL POLICIES THEIR D&O IS FOR . . .





QUESTION

What do you do when you have been sued?

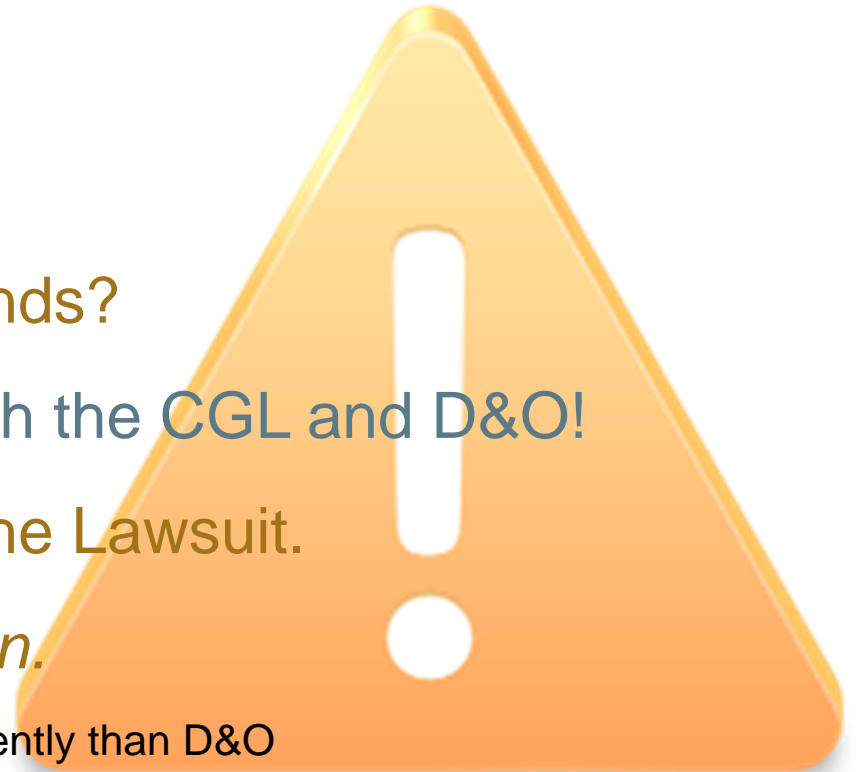
ANSWER





Notify! Notify! Notify!

- When Served with a lawsuit, IMMEDIATELY:
 - Notify Insurance
 - Notify the Association's Attorney
 - Start gathering information
- Which Policy covers/defends?
- When In Doubt, Notify both the CGL and D&O!
- Only **30 days** to answer the Lawsuit.
- *Notify D&O early and often.*
 - Be careful with CGL, it is rated differently than D&O





What is Notice of a Claim?

- Owner Notifies Association of a grievance and intent to take some action (D&O)
 - ❑ Letter, Call, Statement, Lawsuit, or something you just know about
 - ❑ Give “Notice of a Potential Claim”
- An Accident/Event causing damage/injury (CGL).
 - ❑ Notify CGL Insurance Immediately
- Contact Attorney





Coverage/Defense Revisited

- “Reservation of Rights”
 - ❑ Defend *for Now*, and pay the legal fees and costs of the lawsuit.
 - ❑ Re-evaluate later and may or may not pay a judgment if the Association loses.
 - ❑ Re-evaluate later and may or may not continue defending.



QUESTION

Will liability insurance pay to fix the problem that led to the Lawsuit (i.e. faulty drainage, broken pipes, amend the By-Laws, etc.)?

ANSWER

NO!



Lawsuits You Should Expect

Aggressive enforcement often leads to owner lawsuits.

- Towing/booting
- Suspending Utilities
- Denying Access to Common Elements/Amenities

If your Association is aggressive then it needs good D&O.





The Perfect Storm:

The Crossroads of D&O and CGL

When a Board decision or action also results in property damage or personal injury.





When in Transition . . . Cover your Tail. . . Literally

- When Changing D&O companies, ***purchase tail insurance*** (a/k/a “Extended Reporting Period”)





D&O Fringe Benefits

- Will your D&O Insurance Company Appoint NowackHoward to defend the lawsuit?
 - Can save everyone money,
 - The Association gets to keep its attorney or
 - The Association gets an attorney who actually knows CA Law
- These D&O Carriers appoint NowackHoward:
 - CAU
 - Travelers
 - Great American
 - CNA



Adequate Insurance Revisited

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- ✓ 3rd Party General Liability
- ✓ 3rd Party D&O Liability
- ✓ 1st Party Crime/Employee Dishonesty
- ✓ Workers Compensation
- ✓ Cyber Insurance (check with your broker)
- ✓ Employment Practices Liability



Why Adequate Insurance?

Because you can't get insurance for having too little insurance.

- No Directors & Officers Insurance Policies will cover a claim against the board for their failure to obtain adequate insurance (although some may pay to *defend* the lawsuit).

Because inadequate 1st Party Insurance can create lead to liability claims:

- Inadequate 1st party insurance may leave damages/loss unrepaired or uncompensated for and can motivate an owner to sue.

No do-over, so get it right the first time.



Where to go for the good D&O

For CAU, Travelers, Great American, CNA,
and USLI call:

Judy Dreher
at
Dreher Insurance
(678) 205-0224



Thank You

Penelope Hilliard
770.863.8911
penelope@nowackhoward.com