Associations Should Review Insurance Needs

Finding Right Type, Amount Difficult Task

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Today's column is the third part of our discussion of tips for new association board members (and perhaps some reminders for the veterans as well). In the first installment, we looked at director liability and indemnification. The second installment was a primer on the governing documents. Today, a basic understanding of association insurance.

Undoubtedly, one of the most serious responsibilities of a board of directors is to insure that the community's physical property, as well as the liability exposures of the association, are properly insured. The following are the most common insurance products for associations:

Casualty Insurance
This is the insurance policy that pays to reconstruct the property after a calamity such as a fire. Windstorm losses usually require a separate policy. In homeowners' association communities, the governing documents usually (but not always) require the owner to insure the individual homes.

Flood Insurance
Many condominium associations carry a master policy of flood insurance. For communities located in federally designated flood hazard areas, mortgages can not be written unless adequate flood insurance is in place. HOA's are less often involved in flood insurance.

Liability Insurance
The general liability insurance policy (often called G.L.) is the insurance the association buys for most types of personal injury claims. For example, if someone trips on the community property and files a suit, the G.L. policy is the insurance that provides protection.

Workers' Compensation
Unless the association employs four or more employees, workers' compensation is not legally required. However, many associations which do not employ four or more people still purchase a "minimum premium policy" as a stop-gap protection.

Fidelity Bonding:
Sometimes called "crime coverage", "employee dishonesty coverage", or "fidelity bonding", this type of insurance is designed to protect against theft or embezzlement by employees, directors, management personnel, or others who might have access to association funds.

Directors and Officers Liability Insurance:
Usually called D&O insurance or E&O (errors and omissions) insurance, this is one of the most important policies for the association, and provides protection to the individuals who serve on the board. D&O insurance was covered in more detail in the first installment of this series.

Umbrella Coverage:
This is a "catch-all" policy, that is intended to provide a safety net when no other insurance is available for the problem, or if coverage limits have been reached.

The community association insurance market has changed drastically in the past ten years. Premiums have skyrocketed and coverage exclusions (for example, mold claim coverage) have mushroomed. Still, like most significant purchases that we make, an educated consumer is a good consumer.

Now on to reader mail.

QUESTION: The board of directors of our homeowners' association has decided to abolish our "roof reserve" account, and return the funds to the members.

The board's action is an attempt to limit the association's liabilities for making roof repairs. The reserve was originally established because our buildings, although not condominiums, share common roofs between two units. The members were not given the opportunity to vote on this matter. What are our options? - K.S.

ANSWER: The association's obligation to maintain roofs is not created by the establishment of a reserve fund, nor can eliminating the reserve fund take away an obligation that exists.

You need to review your association's deed restriction (usually called declaration of covenants), which will contain the answer. If the association is not obligated to maintain the roofs, it was probably not proper to establish the reserve account in the first instance, and return of the funds would appear to be appropriate (without addressing whether former owners who may have contributed to the fund would have a claim).

If the association is obligated to maintain the roofs, per your covenants, there is still no obligation to maintain a "roof reserve" fund, unless so required by the bylaws. This is one of the areas where the HOA law is much different that the stricter condominium statute.

Most "party roof" maintenance provisions I see in HOA declarations, which try to get the abutting owners to cooperate on maintenance, are ineffective at best. You may wish to approach the board about whether amendments to the covenants would be to the community's long-term interests. Good luck.

QUESTION: Where can I find information regarding the number of units that can be rented in a condo community without jeopardizing our "senior status"? - J.R. (via e-mail)

ANSWER: I believe you are referring to the Fair Housing Amendments Act of 1988 and the so-called "55 and over" exemption.

The exemption, which is the only way a community association can prohibit residency by families with children, has nothing to do with how many units are leased. Rather, it is occupancy of the units (whether by owners, renters, or others) that is important. In general, at least eighty percent of the occupied units must be occupied by at least one person age 55 or older for the association to qualify for the exemption. There are other requirements for the exemption as well. ⚖

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.

Send questions to Joe Adams by e-mail to jadams@becker-poliakoff.com This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.