

**What Every  
Property Manager  
Needs To Know  
About Directors And  
Officers Liability For  
Community Associations**



**Distinguished  
Programs**

## Consider The Facts...

- An association board spends \$1 million defending itself against a resident alleging that a special assessment was too high and inequitably distributed.
- In a dispute over a fence, a community finds itself facing a legal tab of \$61,000.
- In an argument over a \$500 pair of drapes, both the association and the homeowner paid more than \$15,000 in legal fees.

## Why Directors & Officers Liability Insurance Is Critical

Despite good intentions and the care your clients take in performing their duties, community association boards are being sued with increasing frequency.

In California alone, experts estimate that 75% of community associations are involved in a legal dispute. The good news is, affordable Directors & Officers Liability Insurance is available. It protects the association and board members from lawsuits resulting from actions or decisions made while serving. Depending on the actual policy, it can also protect you in your capacity as property manager. The bad news, is many associations don't have adequate protection. Without the right insurance, their assets, as well as your firm's, could be on the line.

## Ensuring Your Community Association Clients Have The Right Policy

Not all Directors & Officers (D&O) liability insurance is created equally. There are no "standard" D&O policies.

As a result, doing an apples-to-apples comparison can be tough. Advise your clients to:

- Look for an insurance agent who specializes in directors and officers liability. He or she can help the association do a thorough review and comparison.
- Go for a stand-alone policy. Some insurers handle Directors and Officers as an add-on or endorsement to the association's package policy. The problem with these approaches is that coverage is often inadequate. Stand-alone policies typically provide better coverage for a minimal, if any, cost difference.
- Use the *Community Association Directors & Officers Insurance Checklist*. It outlines the key policy features to look for.

## Community Association Directors & Officers Liability Insurance Checklist

### Make sure the policy:

- Provides coverage for:
  - the association as an entity
  - past, present and future board members
  - property manager
  - builders and developers serving on the board
  - individuals working at the discretion of the board (e.g., volunteers, committee members, employees, etc.)
- Provides defense for **both** monetary and non-monetary (defense) claims
- Covers defense costs associated with breach of third party contract claims
- Pays on the association's behalf so there is no waiting to be reimbursed
- Provides coverage for defense costs that is in addition to the limit of liability and is not subject to a deductible
- Contains broadly defined protection for claims related to Employment Practices Liability, such as wrongful dismissal, discharge, termination and sexual harassment
- Includes coverage for prior acts
- Enables the association to choose their own counsel

## Choosing Policy Limits

The limit of insurance on a Directors & Officers policy is the amount of money the insurance company will pay for any single claim, and/or all claims reported in a policy year.

Limits vary from policy to policy (ranging from \$1 million to \$5 million), and these limits may be extended by most Commercial Umbrella policies. Look for a policy that does not diminish the limit of liability for defense.

While the “right” limits depend on the community association’s individual situation, it is extremely rare for any D&O claim, defense and/or indemnity, to break the \$1 million mark.

## Insurance is Only the Beginning

Having the right Directors & Officers Liability insurance is critical; however, there is a lot you can do to work with your clients to limit their odds of being involved in a suit. Encourage your association clients to:

- Elect board members who are serious and understand what their responsibilities will entail.
- Provide training for all board members.
- Make sure all board members have a good understanding of the association’s by-laws, CC&R and any other governing documents.

- Retain association counsel and hire experienced professionals if decisions are outside of the board’s comfort zone.
- Require new residents to read and sign off on the by-laws and other regulations when they move in.
- Provide a mechanism that enables residents to address problems or grievances. Communication can keep small issues from becoming big ones.
- Review by-laws, CC&R’s and other governing documents regularly to ensure they are up to date.
- Keep good records and accurate board minutes.
- Maintain a complaint log that includes details on how you responded
- Keep emotions and personalities out of the equation.

## How Claims Work

The Directors & Officers Liability insurance is a “claims-made” policy, which means that a claim must be presented to the insurance company during the policy period. If the association even suspects that a situation could lead to a claim, they should immediately notify you, their insurer, and insurance agent. The report of a potential claim will not affect the association’s insurance rates.

## The Most Frequent D&O Claims

### **Breach of Fiduciary Duty –**

For example:

- A board member approves one color for the whole condo association, but his unit gets its own shade
- Officer elects to hire the services of his brother-in-law's pool maintenance company without disclosing the information to the board

### **Breach of By-Laws –** Examples include:

- Not enforcing rules and regulations with a neighboring unit that failed to submit plans for improvement prior to making changes
- Failing to obtain the requisite number of votes prior to hiring a contractor to do some work
- Failure to provide access to books and records

### **Assessment Disputes**

#### **Discrimination –** Examples include:

- Approving a front yard fence for one unit and denying an application for the same fence to another unit
- Selectively restricting use of association facilities

#### **Wrongful Employment Practices –**

For example:

- Wrongful termination
- Sexual Harassment
- Unfair Hiring Practices

## About Distinguished Programs

Distinguished Programs specializes in providing insurance products to the real estate industry. As one of the largest and fastest growing real estate insurance program managers in the country, Distinguished works with more than 25,000 community associations throughout the country.

In addition to Directors & Officers Liability Insurance for Community Associations, we provide competitive property and liability insurance products for real estate clients that include: brownstones, city homes, apartment buildings, shopping centers, office buildings, senior housing, affordable housing, student housing, single-family home planned unit developments, time-shares, condominiums and cooperatives. Distinguished does business through independent agents and brokers.

Distinguished Programs is one of the few insurance program managers to earn a "Best Practice Designation" from the Target Markets Program Administrators Association. The designation recognizes program managers that achieve and maintain a level of excellence in their business. Distinguished was also one of *Inc. Magazine's* Top 5000 Fastest Growing Companies in America.



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