

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



**Distinguished
Programs**

Consider The Facts...

- A community 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. The bad news is, many associations don't have adequate protection. Without the right insurance, their personal assets could be on the line. In addition, you could find yourself in the line of fire.

Ensuring Your Community Association Clients Have The Right Policy

Not all Community Association Directors & Officers Liability is created equally. There are no "standard" D&O policies. As a result, doing an apples-to-apples comparison for your clients can be tough.

- Avoid handling coverage as an add-on or endorsement to the client's package policy. Generally speaking, coverage is inadequate. For example, many add-ons and endorsements exclude defense coverage for non-monetary claims. Considering that 75% of community association claims involve suits for non-monetary damages, this could be a big exposure that comes back to haunt you.
- Go for a stand-alone policy. They typically provide better coverage for a minimal, if any, cost difference.
- Work with an underwriter who knows real estate and has experience writing community associations

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

Limits vary from policy to policy – ranging from \$1 million to \$5 million. 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 your client’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

Finding the right Directors & Officers Liability Insurance for your client is critical; however, there is a lot you can do in terms of risk management and loss control 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

Directors & Officers Liability insurance is a “claims-made” policy. If the association even suspects that a situation could lead to a claim, they should immediately notify you, their insurer, and property manager. The report of a potential claim will not impact 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, we work with more than 25,000 community associations throughout the country.

Distinguished does business exclusively through independent agents and brokers. 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 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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