

# Directors & Officers Liability

## Why Board Members Need Community Association D&O Liability

Community associations present a unique set of challenges to insurance brokers.

Education is a key component to understanding these challenges and it is the insurance broker's job to educate and explain the types of risks the associations face and how it can best protect itself from loss.

What is the best way for a broker to convey these risks to their client, the community association? One of the best ways is to provide real life examples of a wide variety of claims community associations have encountered and the amount each claim costs.

The lack of funds at many associations is raising the number of breach of contract claims and has put the associations in a position where they cannot afford to provide the same services they offered in the past. Meanwhile, directors and officers liability claims across the board have increased in the past few years.

Currently, the top five claims community associations face include:

breach of fiduciary duty; breach of contract; non-employment discrimination; employment practices liability; and wrongful foreclosure.

The financial crisis has caused an increase in the number of

claims for many community associations, as well.

The following includes some examples of directors and officers liability insurance claims your community association property managers and board members might want to know about.

- **Breach of Fiduciary Duty: \$280,000 Defense Costs.** A condo association was sued by a unit owner over parking spaces. The owner filed a lawsuit against the board of directors at his condo association alleging they breached their fiduciary duty in that they violated the condominium act and local parking regulations by creating illegal parking spaces. Specifically, the plaintiff alleged that the defendants knowingly and willfully violated the condominium act by allowing parking spaces to be auctioned off resulting in non-unit owners occupying portions of the common parking garage to the exclusion of all other unit owners. The condo owner sued the board of directors in an effort to force the association to rescind the sale of the spaces, pay for

punitive damages and attorney's fees.

- **Election Dispute: \$660,000 in Defense Costs.** Following an initial board of director's election, a dispute arose concerning the validity of that election. The association held another election

to attempt to fix the dispute and that only caused more problems as the originally elected board members refused to relinquish their posts to the newly elected board members. The association had to sue the board members in an effort to determine which set of board members should be able to keep their posts.


- **Wrongful Termination: \$550,000 Settlement; \$170,000 in Defense Costs.** A 74-year-old condo association employee filed a wrongful termination claim against an association, claiming he was wrongfully terminated as a result of his reporting dangerous working conditions to OSHA. The employee also claimed he wasn't properly paid minimum wage and overtime wages.

- **Discrimination: \$100,000 Settlement; \$140,000 in Defense Costs.** A complaint was filed by a prospective buyer against a condo association with the Department of Housing and Urban Development (HUD) alleging that the prospective buyers' application to purchase a unit within the association was denied for discriminatory reasons. Specifically, the buyer alleged the association president discriminated against him by denying his application based on his age, national origin, and

familial status. The HUD commission issued a finding of probable cause. During that time, the board allowed the prospective buyer to purchase the exact unit they had initially sought. Despite this, the buyer filed a lawsuit against the association alleging discrimination and included damages representing the difference of the unit purchase price



during the time of the disputed application approval process, attorney fees, compensatory and punitive damages.

Another extremely important point: community association board members and property managers need to be aware of what is excluded in their current directors and officers liability policy. Many policies currently available exclude breach of contract, discrimination, employment issues and architectural issues, so as the old saying goes "buyer beware!" 

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