

## Under Cover

**C**OMMUNITY ASSOCIATION board members face so many questions and concerns, it's enough to keep anyone up at night. They almost have to become instant experts at everything—an impossible task. That's why directors and officers (D&O) liability insurance is so important, especially because personal assets may be at risk. Board members and even community association volunteers can be held personally liable for decisions and actions made on behalf of an association.

Claims are on the rise at community associations across the country. Currently, five of the top claims associations face include breach of fiduciary duty, breach of contract, nonemployment discrimination, noise and foreclosure judgment. With such a wide range of claim situations, coverage that protects and prepares an association for multiple scenarios is critical.

Be sure to speak to your broker about your D&O policy; some policies exclude breach of contract, discrimination, employment issues and architectural issues. Here are a few real-life claims and how quickly costs spiraled out of control.

### **Breach of fiduciary duty, \$280,000.**

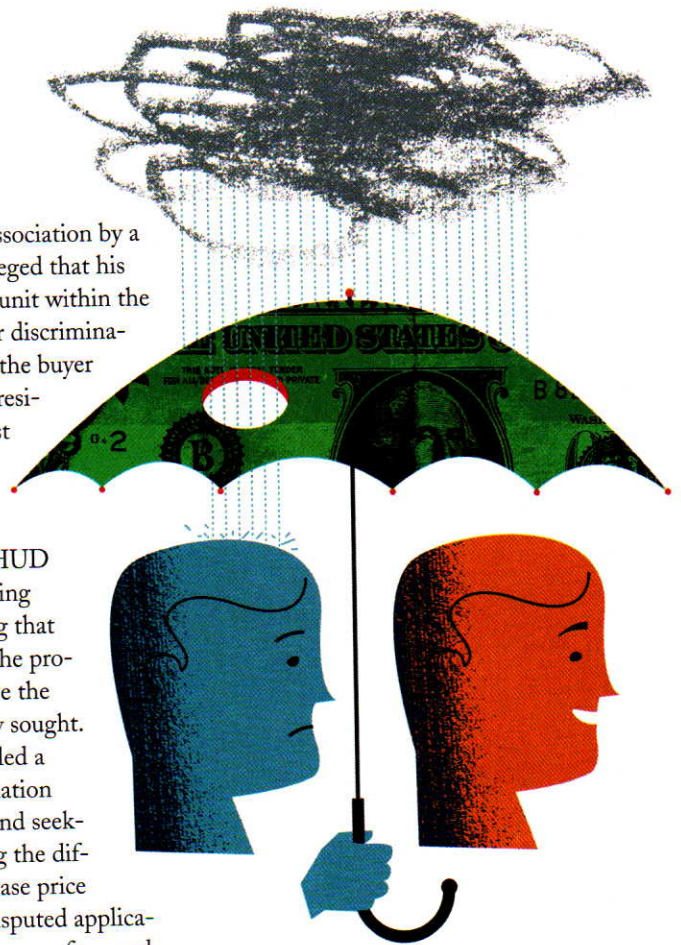
A condominium association board was sued by a unit owner over parking spaces. The owner alleged the board breached its fiduciary duty by knowingly and willfully violating condominium bylaws by allowing parking spaces to be auctioned off, which resulted in nonowners occupying portions of the common parking garage to the exclusion of unit owners. The aggrieved owner sued the board in an effort to force the association to rescind the sale of the spaces and pay for punitive damages and attorneys' fees.

**Discrimination, \$240,000.** A complaint was filed with the Department of Housing and Urban Development (HUD)

against a condominium association by a prospective buyer who alleged that his application to purchase a unit within the association was denied for discriminatory reasons. Specifically, the buyer claimed 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 he had initially sought. Despite this, the buyer filed a lawsuit against the association alleging discrimination and seeking damages representing the difference of the unit purchase price during the time of the disputed application approval process, attorney fees, and compensatory and punitive damages. The parties agreed to a \$100,000 settlement; defense costs totaled \$140,000.

**Breach of contract, \$62,000.** An association and three former board members were sued by their management company for breach of contract. The company demanded payment it claimed was due under the terms of the contract plus attorneys' fees.

**Noise, \$320,000.** An owner of a New York City cooperative filed a complaint with the city's housing court regarding noise levels coming from the building's elevator equipment. The owner argued that the noise violated permissible sound levels set forth in noise and building codes. The case was resolved after the judge put pressure on the owner to settle with the cooperative and stated there would be no chance to recover legal fees.



**Foreclosure judgment, \$175,000.** A condominium owner sued his board after his personal property was misappropriated during the association's execution of a foreclosure judgment. The suit was settled for \$175,000, including legal fees.

These are just a few examples of the abundance of claims associations currently face. When you can't be an expert at everything, D&O insurance can help protect you. Take the time to review the association's policy and ensure the coverage and the scope is sufficient. It may even help you sleep better at night. **CG**

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### **Resources**

**Insurance: How Community Associations Protect Themselves**, a Guide for Association Practitioners, by Clifford Treese, CIRMS, & Katharine Rosenberry. Members: \$15. Order at [www.caionline.org/shop](http://www.caionline.org/shop).