



When to File a Directors and Officers Claim

Associations will periodically shop their insurance in order to look for the best coverage at the right price. A great deal of attention is often spent analyzing the scope of coverage of the Directors and Officers (D&O) insurance pol-

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icy. However, when a claim occurs, even the best D&O policy can leave you uncovered if the insured does

not follow a certain protocol when handling threats from others.

Board members are required to perform things such as enforcing the by-laws and CC&Rs, establishing sound fiscal policies, developing a workable budget, selecting an attorney, insurance agent and other professionals, and much more. Directors must obey state and federal laws, they must put the interests of the association over their own personal interests, and their duties and decisions must be handled with such care as an ordinarily prudent person would use under similar circumstances. Even when the board is professional and handles each matter in the best way possible, others can claim wrongdoing.

The most common areas where Directors & Officers for community associations get into legal trouble are:

- The board's failure to adhere to by-laws
- The board's failure to provide for a proper count of votes and proxies.
- The board's failure to maintain common areas.
- The board's failure to properly disburse funds (*i.e.*, insurance proceeds)
- Challenges to assessments
- Challenges regarding easements
- Challenges to decisions of the architectural review committee
- Challenges regarding power granted the board by the by-laws
- Improper removal of board members
- Decisions by the board resulting in physical damage to the association
- Breach of fiduciary duty
- Defamation by the board of a member

A popular question that is asked by many community managers and board members is, "Should we file this claim now, or wait to see what develops?"

Regardless of the specific wording, all D&O policies require the insured (association) to notify the insurance company whenever it is faced with a written demand or complaint relating to the board's duties/actions. However, the key word in all of the policies is "written." This means that when a homeowner calls the management company to argue their monthly assessment and subsequently says, "You will hear from my attorney," you do not need to notify your insurance company. Likewise, a verbal threat at a board meeting or an on-site visit can be ignored—for at least the time being. If and when a complaint is made in writing, turn the claim in immediately. One of the country's leading wholesalers of insurance for directors and officers is Kevin Davis Insurance. According to Kevin Davis, late reporting of a claim is one of the top three reasons for a claim denial. The importance of this point dramatically escalates when the association is switching insurance companies. D&O policies will only allow a certain number of days for any claims to be filed by associations that have cancelled their D&O coverage. If not handled properly, an association could find itself between two carriers with no coverage for a claim.

The typical reasons for a board or manager deciding not to file a claim are numerous, but some of the leading reasons are as follows:

A belief that the matter is really no big deal

This is extremely short sighted as even the smallest matter can be a big deal to the party that feels he has been wronged.

A plan to handle it internally

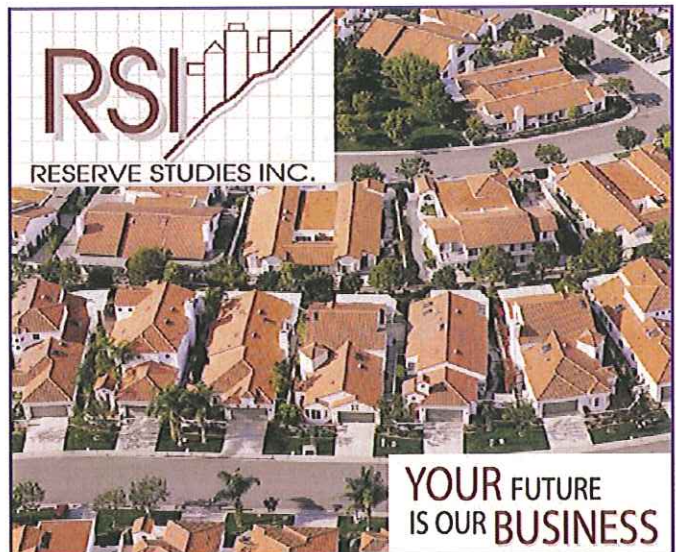
Well-intended people will suggest that they can handle the matter without the insurance company's involvement. Sometimes even attorneys are involved in this decision. However, attorneys that are well connected to the needs of associations realize that coverage can be denied if the insurance company is not allowed to participate in the process from the beginning.

Fear of rate increase

Another of the country's leading wholesaler of insurance for directors and officers is Ian Graham Insurance. According to Ian Graham's Vice President, Tifinni Tegan, an insurance company will not necessarily raise the rates of a client for merely turning in a claim. In fact, the carrier will typically appreciate the proactive approach from the association. Ms. Tegan points out that the majority of notifications do not result in paid claims and therefore are largely ignored when calculating rates.

So if one of your associations ever receives a written demand or complaint relating to your board's actions or duties, it is best to notify your insurance company as soon as possible. ⚙

This article was written and submitted by Patrick Prendiville, CIRMS of Prendiville Insurance Agency.



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