Association Insurance Q & A

Insurance is always a difficult and timely topic. We have covered a number of different types of insurance that the association should have and why they should have them. Because most of us are not experts in the field, we have received many questions from owners and board members alike. Therefore, this week our format is a little different. It will be a Q&A format. We have submitted the most frequently asked questions to our vendor experts at Insurance Office of America for the answers. We do have to keep in mind that location, building type, documents, and local and state laws may affect how these are applied.

Q: Can you explain how the "hold-back" or deductible is paid on an insurance claim for a condominium or HOA (townhome insured like a condo) and how should an owner's policy interact with the deductible?

A: Generally, the board will establish deductibles based upon available funds, including reserve accounts, or predetermined assessment authority at the time insurance is obtained.

The Declaration of the Condo or HOA will determine the amount of assessment for each unit owner based on his or her pro rata share of their interest in the common elements. A unit owner's policy should provide loss assessment coverage per occurrence which should contain a provision stating that the coverage is excess coverage over the amount recoverable under any other policy covering the same property.

All property insurance deductibles, uninsured losses, and other damages in excess of property insurance coverage under the property insurance policies maintained by the association are a common expense of the condominium or the HOA (the Association pays the deductible), except where the unit owner is responsible for the costs of repairing or replacing other portions of the condominium property including the costs of repair or replacement of personal property of other unit owners or the association, as well as other property, whether real or personal, which the unit owners are required to insure. The by-laws and declaration of covenants, conditions and restriction should identify the unit owner's responsibility.

Q: How does an insurance company determine what the Association's responsibility is in a condominium and what should be or is insured by a homeowner at the time of a covered event?

A: Responsibility is determined by the conditions set forth in the Association's By-Laws and Declaration of Covenants, Conditions and Restriction. Association owned property, Common Elements and Unit owner property/Unit boundaries will be clearly defined. Typically, the Association insures all the building and common elements under a policy while the Unit Owner would purchase insurance for items not covered by the Association's policy. The Association's policy generally covers the buildings (walls, roof, floors, elevators) but leaves the unit owner the responsibility of insuring condo unit's appliances, carpeting (or other floor coverings), cabinets, wall coverings (paint, wallpaper, paneling) and other items in the condo unit and in some instances, the interior walls. The Unit Owner may also be responsible for the following: The value of building additions or alterations made by the unit owner, at their expense and damage to their condo unit not compensated because of the Association policy deductibles.

Q: Boards always want volunteers from the community to get involved, sometimes in doing things that could expose the volunteer and the Association to liability such as trimming trees, removing debris, maintenance work at the entrances or gates, etc. Can you explain why the Association's liability insurance won't cover a volunteer?

A: General Liability insurance is designed to protect the Association from a wide variety of liability exposures. The policy covers four types of claims:

· Bodily injury that results in actual physical damage or loss, such as slip and fall accidents

· Property damage or loss resulting from the operation, maintenance or use of common area

· Personal injury, such as false arrest, libel, slander, defamation of character and invasion of privacy

· Advertising injury such as infringement of copyright

General liability insurance protects the "insureds" (organization, directors, officers and employees), subject to policy terms and conditions, for claims arising out of the exposures shown above, however most policies do not cover volunteers. Some carriers will add coverage for volunteers (if endorsed as an Additional Insured). The policy covers the negligent acts of the "insureds" that cause injury to another person or damage to the property of another. General liability insurance will provide recoveries to those hurt by a nonprofit's volunteers but will not protect the volunteer from being sued.

In contrast, a D&O policy insures against the "wrongful acts" of the organization, its directors, officers, employees and volunteers (depending upon the definition of "insured"). Each policy defines "wrongful act" differently, but in general it means the actual or alleged acts or omissions including breaches of duty that the directors, officers or other insured may perform. Most D&O policies exclude coverage for bodily injury or property damage, unless the policy includes Employment Practices Liability (EPL) coverage. The EPL form usually includes coverage for emotional distress and other bodily injury type allegations contained within the claim.

Since these two policies cover very different risks, the D&O policy should also include volunteers as "insureds". Most non-profits use committees to perform many of the governance and management functions. The membership of the various committees often includes non-board member volunteers. The committee and its members could be named in a claim alleging that the committee failed to purchase adequate insurance. A commercial general liability policy would not cover this claim since the occurrence does not include bodily injury or property damage. A D&O policy would probably respond (subject to policy provision) to the allegation of a "wrongful act". Therefore, each organization should evaluate its own insurance needs and consider purchasing both D&O and commercial general liability (CGL) insurance.

The Volunteer Protection Act of 1997 provides immunity from lawsuits against a nonprofit's volunteer where the claim is that the volunteer carelessly injured another in the course of helping the non-profit. The Act does not provide immunity to the Association itself, which is where a D&O policy would defend. The immunity is a qualified immunity and protects the volunteer only against claims of negligence and not against claims of gross negligence, willful or criminal misconduct, reckless misconduct, or conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer.

The primary protection for injuries to volunteers is workers compensation. This coverage will pay for medical costs if the volunteer gets an injury or illness resulting from the volunteer work being performed. This also protects the Association from being sued by the volunteer for the injury or illness. If volunteers get injured on a job where they are not covered under workers compensation, they would get a small amount of the damages from the medical coverage in the Association's general liability policy. This coverage ranges from $1,000 to $25,000 and can be paid without proof of negligence.

We would like to thank Sandy Lewis from Insurance Office of America for this article. Insurance Office of America is a privately held, full-service insurance agency founded in 1988 and is one of the fastest-growing independent agencies in the United States. IOA was named one of the top three Commercial Insurance Agencies of the year, 2005, by National Underwriter. A member of Independent Insurance Agents of America, IOA's home office is located in Longwood, FL with branch offices reaching from coast to coast.