



## Navigating the E&O Pitfalls of Insuring Homeowners Associations

Partially driven by the wave of housing foreclosures over the past several years, and partially driven by other interests (an aging population, convenience and desire for more amenities), common interest developments account for a fast-growing portion of the changing real estate market in the U.S. They pose challenges for homeowners associations across the country, at a time where litigation concerning the daily decisions made by association boards and managers is on a rise. The HOAs governing the CIDs must have adequate insurance coverage in place, since most lawsuits are primarily filed by the condo owners or homeowners the associations serve. Insurance agents must always be careful in the procurement and renewal of this type of insurance, because not all HOA policies are equal.


The first step to successfully procuring HOA insurance coverage for your customer is learning about the scope of coverage of the HOA policies that are available in your market. What does the proposed HOA policy cover? Are the officers, board members and employees of the association insured under the relevant policy? Generally, HOAs are responsible for buying insurance that covers all public areas of the development. The bylaws of the HOA will define what property is owned by the association and therefore falls under the HOA's obligation to insure against damage and loss. Nevertheless, it is often difficult to determine where the physical structure of the HOA's building ends and where the individual owner's obligation begins. For example, when dealing with multifamily units, the dividing line is typically the interior wall of the units, with some HOA policies covering up to the studs and beams, while others will extend coverage into the unit itself, to cover the finished interior walls. Individual homeowners must insure their own units. In addition, some states require that HOAs have insurance to pay the costs of lawsuits filed against homeowners by parties who are injured or killed on the property.

Many HOAs carry a master policy that generally covers the parts of the residential structures shared by all homeowners, such as common walls, lobbies, stairways, roofs, elevators and basements. HOA governance documents should state which areas (such as pools, stables and other common facilities) the HOA must insure. As such, it is crucial that this information and any changes to the HOA governance documents be provided to the agent during the application or renewal process for this type of insurance coverage. The standard master policy should cover two key risks: general liability and property for common areas.

Additional coverage options should also be considered to protect both the homeowners and the association. Coverage that might be considered for protection of the homeowners and the HOA includes:

- **Backup of sewer and drain:** This option provides coverage for damages caused by sewer and drain backup.
- **Demolition coverage:** This option provides for various extra expenses incurred after a covered loss. For example, if the HOA building suffers a major loss but a portion is still standing, this coverage will provide an indemnity for demolition and removal expenses.
- **Law and ordinance coverage:** This coverage provides for extra expenses associated with bringing a property up to existing building codes after a loss, which can be significant if the insured property is older and lacks elements currently required under building codes, such as disability access, emergency lighting and sprinkler systems.
- **Directors and officers liability:** This option provides protection for the directors and officers of the HOA in the event they are sued in connection with their duties within the HOA. For example, if a contractor hired by the HOA board damages the building, the board members will be protected against a lawsuit in that regard. This add-on coverage is essential for protecting the personal assets of the directors and officers of the HOA from exposure arising out of their service to the association.

In addition, the HOA may need to consider additional coverages to protect its employees or volunteers, such as hired and non-owned auto coverage, crime and fidelity coverage, and even workers compensation.

As all HOA policies have coverage gaps to a varying degree, knowledge of your HOA customer's operation is essential. Many insurance carriers will negotiate the terms of their HOA policy forms to suit the unique needs of your customer. Accordingly, it is important that every step of your HOA customer's insurance procurement and renewal process be documented in your agency file, as any subsequent legal action concerning coverage under the insurance policies may ultimately be resolved based upon how a court or jury perceives the agent's creditability against that of the customer. In short, the agency's file can be the best weapon in defending against a frivolous lawsuit brought by a disgruntled homeowner or a new HOA board. 

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