



## Insurance Insights—D&O Coverage

### Directors' and Officers' Liability Insurance Explained

In today's litigious environment, volunteer Directors & Officers face a myriad of exposures. Regulatory mandates, statutes and increased scrutiny from fellow Unit Owners mean trustees are more frequently at risk, translating to rising claims and escalating settlement costs.

Regardless of an association's size, the legal cost to defend a director can be substantial, as are the potential penalties that can be personally incurred. Due to the personal liability risk—which is not covered under most Unit Owners (HO-6) or Homeowners insurance policies—protecting volunteer trustees can be a challenge. All associations should carry a Directors & Officers Liability policy, but coverages vary widely from policy to policy, and not all policies will provide adequate protection.

### D&O Policies Fill A Key Coverage Gap

Unlike the Master Association general liability policy that provides coverage for claims arising from negligent property damage and bodily injury, a D&O policy specifically provides coverage for a "wrongful act," such as an actual or alleged error, omission, misleading statement, neglect or breach of duty.

For example, a board election is not conducted as required by the bylaws, and opposing factions of unit owners—each with their own agenda—take their claim to court to have a board member removed. Trustees are sued individually for breach of duty, which is a *non-monetary claim*. Would your association's D&O policy cover such a claim? This is an important question to ask the association's insurance provider.

An adequate D&O policy provides defense costs against both monetary AND non-monetary claims, and indemnity ("make whole") coverage. In short, a policy should provide:

- Coverage for individual directors and officers;
- Reimbursement to the organization for a contractual obligation to indemnify directors and officers that serve on the board; and
- Protection for the organization or entity itself; and
- Coverage for non-monetary damages.

Indemnification provisions are typically included in the association bylaws, and an attorney with knowledge of state condominium and homeowner association laws should draft and regularly review this document to ensure the association and its trustees are legally protected. That said, a D&O policy can provide an extra blanket of security in the event of a covered loss.

### Coverage Variations

Be aware that D&O carriers are not consistent with their policy forms. This fact, plus the complexity of D&O claims, requires the carrier to have an industry commitment and deep expertise, as well as the financial resources to handle potential claims. An uninsured claim can quickly drain an association's reserve funds, and even a relatively simple claim can result in thousands of dollars of defense costs.

## Are These Minimum Coverages Included in Your D&O Policy?

These are the minimum coverages that insurance carriers should provide on their policies:

- **Monetary AND Non-Monetary Damages** for the Association and its Officers, Volunteers and Unit Owners. If there is no coverage for non-monetary claims, find a new policy!
- **Discrimination and Third-Party Employment Practices.** Even if an Association does not have direct employees, it may be liable for discrimination, sexual harassment, and similar claims brought by third parties' employees, Unit Owners, or fellow Board Members.
- **Breach of Contract Coverage.** Another key coverage for non-monetary claims that can arise from violations of the Association bylaws (such as the election example cited above).
- **Coverage Extends to Community Manager.** Often, a property manager makes decisions in conjunction with or on behalf of a board, so they, too, can be named in a suit. Typically, the management contract requires that the Association indemnify the manager.

## Quick Claim Scenarios

D&O claims are never simple. Typically, they include accusations of a breach of duty or some violation of the bylaws. Here are a few brief examples of past claims:

- A homeowner sues the association for diminished property value after their 50-year-old oak tree is removed in order to install a new sewer line. (Monetary)
- A group of unit owners fight an assessment for pool maintenance. (Monetary)
- The Board votes for a key bylaw change without a quorum, or the required number of attendees, and Unit Owners sue to reverse the change. (Non-Monetary)
- Unit owners accuse the board president of breach of fiduciary responsibility after she hires her son to install new roofs without obtaining competitive bids. (Monetary & Non-Monetary)
- The property manager is sued for alleged unauthorized entry into a unit owner's condominium. (Non-Monetary)
- A unit owner sues the architectural committee for not allowing a cheaper grade of vinyl siding to be installed, resulting in increased construction costs. (Monetary)

## The Daniel & Henry Company is Here to Help

The Daniel & Henry Company provides your Associations with a team dedicated to understanding the differences between insurance carriers' Directors & Officers liability policies. We have made a commitment to Condominium and Homeowner Associations, and have contracted with several carriers that specialize in COA/HOA D&O coverage. **Call Jim Ruebsam, CIRMS, EBP, today at 314-444-1993 to discuss your Associations' needs.**