

Liabilities & Insurance

Each condominium, cooperative or planned community is exposed to liabilities that have the potential to cripple the association. Therefore, commercial insurance is one of the most important components of a community association's risk-management program.

One reason associations exist is to protect assets, which can be tangible (like equipment) or intangible (like resale value). Since insurance helps protect assets, association boards are legally required as fiduciaries to make informed decisions about their commercial insurance program.

Property and liability insurance can be divided into commercial (purchased by the association) and personal (purchased by the homeowner) insurance. The question, "Where do the common elements end and the homeowner's unit begin?" becomes important for each party.

For associations, a commercial package policy covers property and liability. Even the most basic planned community will have some type of common area property. Trees, entrance signs, fencing and light poles fall under property insurance in a commercial package policy.

The causes of property loss fall into three categories of peril: natural (fire, disease, flood), human (homicides, negligence, pollution, thefts) and economic (strikes, new technology, market fluctuations). Typically, insurance contracts deal only with natural and human perils.

Liability insurance covers an association if a claim is brought against it, such as breaching a legal duty, allegedly causing harm and other instances. Liability may result from any number of association activities.

Insurers, operating primarily through agents and brokers, offer a variety of property and liability insurance. Most are standardized, but some are designed specifically for common interest communities. When choosing an insurer, consult the A.M. Best Insurance Company Report or contact the National Association of Insurance Commissioners or the state insurance commissioner for insurers who are financially sound and committed to community associations.

The insurance industry is highly regulated at the state level in terms of rates, policies, standards and business practices. So how can a community association determine whether it is complying with all requirements? Here are some basic steps:

- Examine the governing documents and related rules, regulations and resolutions.
- Examine the state-enabling statute, if any, that created the association.
- Determine if local, state or federal laws apply.
- Determine if the association needs to comply with the requirements for any of the following organizations: FNMA, FHLMC, FHA or VA.
- Determine if the association has assumed any insurance or indemnity obligations under a contract with a contractor or service provider.

One of the important aspects of community association insurance is that it also covers volunteers. People who may fear personal liability if they participate on a board or committee are covered under the association's Directors and Officers insurance as long as they act in good faith and observe the law.