



Insurance Explained

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AMG ADVISES HOAS: CHOOSE VENDORS WITH PROPER INSURANCES

Not having the right insurance coverage is like going on vacation and leaving your front door wide open with a big sign in your yard that reads: Gone for a Week, Take What You Want. It's *that* bad. But, what is the right insurance coverage? Unfortunately, like most HOA/condo governance issues, "It depends,"

says Jim Slaughter, a partner at Rossabi Black Slaughter, PA, which has one of the state's largest HOA/condo law practices. Slaughter, the first North Carolina attorney inducted as a Fellow into CAI's College of Community Association Lawyers (CCAL) and 2014 CCAL National President, explains that while NC law often requires certain insurance and coverage, it's a question of both "must you?" and "should you?" To Slaughter, the answer is easy: Be smart and invest in *and* require proper coverage, based on state statute and your association's own governing documents. "Not having

the right insurance can cause bad will, bad PR and, of course, cost your association and, ultimately, the homeowners, money," he states. "You can spend a lot of time trying to make certain you'll never have an instance when someone is injured or has a claim for damages. Or, instead, with due diligence, you can ensure you have appropriate coverage. Prepare for the unexpected, not the expected."

The Unexpected can have dire consequences, says Randy Fann, Professional Community Association Manager (PCAM), Association Management Group of Charlotte, Inc. "For example, if a contract worker fell off a roof and became paralyzed and his employer did not have adequate insurance, a jury could award multiple millions of dollars to the worker's family and hold the association responsible," he explains. "The injured party's attorney could argue that the association was the employer rather than the vendor company the association contracted with. If the association or its insurance could not or would not satisfy the award, the worker's attorney could place liens on all of the association members' units. This would drive the value of all of the properties way down." Of course, Fann is quick to point out, this is an extreme example, but it does demonstrate how harm can come to an association and its members. The disastrous consequences in this example can be avoided by making sure all contractors working for the HOA have Worker's Comp coverage, whether required by state law or not. To Fann, insisting that vendors who perform work for the association have the proper insurance coverages and licenses is good business practice and protects association members.



So, where to begin? First, know the basics. The North Carolina community association statutes differ, depending upon the type and age of the association. If it's a homeowners association with more than 20 lots created after January 1, 1999, statutes likely mandate a certain amount of property (casualty) insurance and some liability insurance. For condo associations, an important date is whether the condo was created earlier or later than October 1, 1986. "And association governing documents, like the declaration or bylaws, may mandate coverage in addition to or in greater amounts than state statute," Slaughter says. "And, they may go beyond just property and liability insurance and require workers' comp or D&O coverage, which protects board members and employees. Remember, your first threshold is the state statute and the second threshold is the governing documents."



TYPES OF INSURANCE AT-A-GLANCE

PROPERTY/CASUALTY INSURANCE



Required for newer properties by statute, this insurance typically covers the common elements (but, sometimes, also, the units in condos and townhomes) for direct physical loss from listed perils such as fire, flood, tornado, hail, etc. Like private homeowner's insurance, if particular damage is covered it would be minus a deductible. The more coverage you need, the more expensive this type of insurance will be.

LIABILITY INSURANCE



This insurance covers death, bodily injury, accidents and property damage while on the insured property (for example, if someone is injured on the playground, falls into a hole in the parking lot a worker forgot to repair or has an accident at your clubhouse or pool).



D&O (DIRECTORS & OFFICERS LIABILITY)

This insurance helps defend and cover actions of the association, officers and board members for business decisions (for example, a resident sues board members for wrong charges over the course of several years because of misreading the documents).



FIDELITY INSURANCE

Many association covenants as well as good business judgment suggest communities should protect association funds from theft. Fidelity insurance (or fidelity bond) is an agreement whereby an insurance company guarantees against dishonest acts of an agent, officer, volunteer or employee of an association by promising to compensate for covered losses incurred as a result of theft. It is recommended that associations obtain this coverage even if its manager has fidelity coverage because a manager's insurance may have certain limits and would not protect against the dishonest acts of community members/residents, the people who, typically, have ultimate control of community funds.



WORKERS' COMP

By law, this insurance is required if the association pays three or more full-time employees. But, some associations buy it to cover any employee: full- or part-time. Workers' Comp insurance reimburses the employee for missed work and medical expenses due to a workplace accident, lessening the financial burden on the employee and family. To complicate the issue for HOAs, there's the new question regarding having Workers' Comp to cover volunteers. A bill currently pending in the NC General Assembly states that if a business doesn't have employees and only volunteer officers/workers, it isn't required by statute to get Workers' Comp. Even so, community managers often recommend having Workers' Comp, just in case. Consult the pros—an insurance agent and lawyer—to ascertain not only what's needed but also how much.



But the obligation to protect a community doesn't end with insuring the association: it should extend to owners too, according to Jim Taylor, Commercial Lines Manager of M.R. Bare & Associates Nationwide Insurance in Charlotte. Frequently, individual homes/units are not covered by the association's insurance, so, it's smart to avoid unwelcome surprises for owners and encourage them to buy insurance to cover their specific units and personal property. "For a resident, proper insurance can protect property that the association does not insure, such as the resident's house and their personal property," he explains. "Liability plays a part as well since the association's liability coverage does not insure anything that happens on a lot or inside a unit. The resident's insurance would also provide coverage for additional living expenses referred to as 'loss of use' if a resident's home was damaged and uninhabitable while repairs were being made. It is also crucial for condominium owners where the association may carry coverage for the unit that the resident lives in but there is no coverage for any personal items or loss of use in the event of a serious claim."



REQUIRING PROPER INSURANCE COVERAGE CAN PROTECT YOUR ASSOCIATION AND OWNERS

Stuff happens: a painter falls off a ladder, a rock gets thrown through a window, a fire breaks out, a pedestrian is hit by a car in the parking lot, there's a fight. Proper insurance enables associations to do the right thing: make sure people get the care and support they need and deserve if the worst happens while also protecting themselves and the interests of owners. "If you have a small pot of money, prioritize your insurance requirements and amounts," Slaughter advises. "The easy solution is to buy as much coverage as you can reasonably afford to protect your association and cover those challenges you're worried about. At a minimum, you would expect an association to have casualty, liability and D and O coverage." Slaughter notes that the obligation of community associations to have Workers' Comp is currently a hornet's nest of confusion. "We may have a better idea of Workers' Comp requirements after the 2015 legislative session. Luckily, it also may be the least important if you don't have full-time employees and only hire vendors with proper coverage."

When it comes to coverage, Scott Patella, ANFI, Commercial Insurance Executive with Craft Insurance of Greensboro, believes caution is the better part of valor. “Even though someone who provides services for you generally is responsible, the liability can extend not just to the entity providing the service, but also to those who secure their services—that means your association can, ultimately, be liable when something happens. Clearly, insurance is one of the easiest solutions.” Patella recommends:

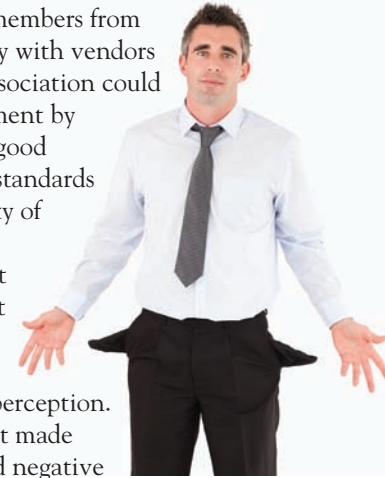
- Hire only insured vendors and contractors.
- Always request vendors provide a certificate of insurance for general liability naming the association as a Certificate Holder and Additional Insured.
- Set a minimum limit requirement of at least \$1,000,000 per occurrence and \$2,000,000 policy aggregate, which most reputable vendors will already have in place.
- Do the same for vendors’ Workers’ Comp—get a Certificate of Insurance naming the association as Certificate Holder.



Tim Sellers, partner of Sellers, Ayers, Dortch & Lyons Attorneys at Law in Charlotte, NC, shares dos and don’ts he believes are vital to an association’s insurance health. “The most important thing you can do is read your Declaration carefully and understand the insurance coverage the association is required to provide. Insurance requirements differ depending on the nature and the needs of each community. Documents for communities that are comprised of similar types of housing units (single family homes, townhomes, condominiums, etc.) may have very different insurance requirements.” Sellers counsels:

- Do work with a lawyer and an insurance professional to help you understand these often complex requirements. They can ensure that the coverage in place meets those requirements.
- Don’t assume that the coverage in place meets the requirements of the documents.
- Don’t assume that the amount of insurance you have is adequate.
- Don’t assume that individual owners are responsible for insuring their dwelling units. Many associations learn that the scope and amount of their coverage is inadequate when a major loss occurs. Read the policy now to ensure the coverage is as the documents require and that all potential coverage gaps are filled.
- Don’t wait for a loss to think about this. Do it now.

The bottom line? Protect your association and its members from financial harm and ruin. “It’s important to deal only with vendors who have the proper insurance,” Fann says. “An association could be found not to have exercised good business judgment by employing improperly insured vendors. Exercising good business judgment is sometimes used as one of the standards insurance companies use in determining the validity of claims. The association’s liability claim could be denied if it did not exercise good business judgment and is sometimes used as the insurance of last resort if a claim is not covered by property insurance.”



But, equally important, Fann claims, is the public perception. “If a member’s property is damaged and they are not made ‘whole’ from their loss, this could cause tension and negative feelings toward the association because the association initiated the work to be done when the loss was incurred,” Fann concludes. “Members may feel the association has responsibility to make up any shortfall they perceive was incurred as a result of their loss. Discontented owners talk to other owners, often without all of the facts, engendering more ill will toward the association.” Slaughter agrees that the human benefits of proper coverage are immeasurable. “It’s good governance, saves money, protects the association and its reputation, and shows the association is trustworthy and cares about its owners,” he says. “Ultimately, you’re protecting your homeowners’ investment and ensuring they won’t have to pay for damages out of pocket when they should not have to.”

FINDING THE RIGHT INSURANCE FOR YOUR ASSOCIATION



Fann notes, while the risk of using a vendor that does not have proper insurance coverage may be considered by some to be small, the potential ramifications of losing a case and having to pay a large settlement could be devastating for an association and its members. That’s why choosing the right insurance with the support of qualified, experienced partners is vital. “If the value of an association’s homes drops because of a claim and insufficient coverage, that would financially wipe out most people,” he says. “Associations often use small vendors as they are able to do smaller jobs and often respond more quickly. But, a small vendor may not have necessary resources in the event of a loss. The question boards of directors should ask themselves is, ‘Is it really worth potentially saving a small percentage of the cost of a job to employ a vendor without the proper insurance coverage, knowing that a catastrophe could spell doom for the owners?’”



Most boards would agree, the success of the association begins and ends with satisfied owners whose interests and investments are protected. “At AMG, we understand every community association is different,” says Founder and CEO Paul Mengert. “However, one of the duties that directors of all community associations have in common is protecting the members and assets of their community. To do so, the community leadership must make sure proper insurance is in place for both the community itself and its various vendors. This is usually accomplished through insurance professionals and by reviewing the association’s responsibility with its attorneys. As a manager, AMG works with client associations to find the right partners and help coordinate this process.”

Tips for finding the right insurance include:

- Work with experienced partners, insurance providers and attorneys who specialize in HOAs.
- Toe the line of your governing documents as well as state statutes.
- While an independent agent is a good resource, get quotes from larger national companies that insure associations in your area to compare benefits.
- Ask the right questions:
 - Are the covered causes of loss the same, and, if not, what are the differences?
 - What are the exclusions?
- If the association is responsible for unit interior damages, which may be the case in condominiums and some townhomes, is sewer back-up coverage provided?
- Ask for details about differences in policies so you can make an informed decision.
- Don’t accept the “they all provide the same coverage” argument. Dig deeper.

Taylor advises HOAs keep their eyes on the prize: The basis of all insurance is to protect against serious financial loss. “For an association, property insurance can protect common items of property owned by the association such as a pool, pool house, clubhouse, entry monuments, playground equipment, etc. Likewise, property liability coverage can protect the association against incidents that take place in the common areas and facilities. Sometimes insurance responds even in the absence of negligence on the part of the association, such as medical payments coverage under the general liability. The primary thing that associations avoid by securing proper insurance is the potential financial consequences of having to pay out of pocket for things that, otherwise, would have been covered by insurance—both property losses as well as liability.”



About AMG: AMG is a professional community association management company dedicated to building effective community associations. AMG guides and assists executive boards to help protect the association’s interests, enhance the lives of community members and improve the property values in the community. With offices throughout the Carolinas in Greensboro, Winston-Salem, Charlotte and Raleigh NC, and Greenville and Aiken, SC, AMG is a knowledgeable partner in enforcing community governing documents with a proven set of processes and techniques, and supporting communities with a broad range of services which can be tailored to individual community needs. Association Management Group, Inc. is a locally Accredited Business by the BBB and is a nationally Accredited Association Management Company (AAMC) by the Community Associations Institute. For more about AMG, visit www.amgworld.com.

AMG Advises HOAs: Choose Vendors with Proper Insurance is part of a series of HOA Guidance booklets prepared by Association Management Group (AMG) for clients of the firm and friends. It is intended to provide general information.

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Insurance Explained is provided by Association Management Group as a community service and resource to its member communities. Other titles in the series include: *A Guide to Parliamentary Procedure*, *Guidance for Financial Management*, *A Guide to Collecting HOA Fees*, *Guide to NC Covenant Enforcement & Adjudicatory Hearings*, *Minute Taking Made Easy*, *Guide to a Safer Home*, and *Selecting an Association Management Company*. For a copy, please contact your account representative or visit www.AMGWorld.com.



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This guide, published by Association Management, is designed to provide information regarding association insurance requirements and vendor insurance requirements for the benefit of the Association, its Board of Directors as well as members. This information should not be solely relied on to make insurance decisions. Please consult a qualified expert or professional for advice about your particular association and its needs.