

Don't Jump Without a Parachute! Understanding Community Association Insurance Needs

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In the aftermath of Hurricane Florence, many Community Associations located in the Eastern part of the state had a rude awakening when they discovered they didn't have the right amount and/or proper type of insurance coverage.

More often than not, such lessons were very expensive, and the purpose of this article is to educate Community Association Board members regarding the types of insurance their Community Associations should consider carrying, and which gaps in insurance coverage they should be wary of when evaluating and selecting the right insurance coverages for their Community Associations.

Types of Insurance Coverages Community Associations Should Consider

- General Liability Insurance
- Property Insurance
- Directors and Officer Liability Insurance
- Crime and Fidelity Insurance
- Umbrella Policy
- Worker's Compensation Insurance

General Liability Insurance

General liability insurance coverage protects Community Associations against third-party claims of bodily injury or damage to someone else's property but does not protect the Association's own property.

Both the North Carolina Condominium Act ("Chapter 47C") and the North Carolina Planned Community Act ("Chapter 47F") require all Community Associations in North Carolina, regardless of when formed, to carry liability insurance in reasonable amounts, but leaves the actual particulars of the coverage (i.e., amounts, deductible, exclusions, etc.) up to each Association's Board of Directors.

Typical liability insurance coverage gaps to be aware of are:

- Coverage for automobiles hired under contract on behalf of or loaned to the Association.
- Low MedPay coverage. MedPay coverage pays medical expenses on behalf of the Association for individuals who are injured during an accident on Association property, regardless of who caused the accident.
- Community Manager not covered as additional insured.
- Name of the Association is incorrect on the policy.
- Low limits, especially when the Community Association owns amenities such as a pool, pond, playground, and/or park.

Property Insurance

Property insurance provides protection against most risks to property, such as fire, earthquakes, hurricanes, tornadoes, mudslides, and vandalism. All Community Associations in North Carolina are required to carry property insurance on common elements equal to at least 80% of the replacement cost after the deductible is applied, exclusive of land, excavations, and foundations. In the case of condominiums with horizontal boundaries, property insurance must include the units.

Property insurance coverage gaps to be mindful of include:

- Address of property incorrect on the policy.
- No blanket coverage. Blanket coverage provides multiple types of coverage on one property (i.e., contents and the actual structure), or groups multiple properties together under a single policy.
- No water and sewer backup insurance coverage. This coverage is different from flood insurance in that it covers water or water-borne materials backing up into a unit or residence. This typically happens through sewers, drains, a sump pump, or related equipment. This coverage is very important in condominium and townhome communities.
- No ordinance or law coverage. This covers loss caused by enforcement of ordinance or laws regulating construction and repair of damaged buildings and is particularly important for older condominium and townhome communities to carry.
- Understanding whether flood insurance coverage is warranted.
- Property is grossly over or underinsured.
- Insured to value report has not been conducted every 24 months.
- Not all properties owned by the Association are listed on the policy.

Directors and Officers Liability Insurance

This insurance is payable to directors and officers of the Association, or to the Association itself, as indemnification for losses or advancement of defense costs in the event the Association suffers a loss as a result of legal action brought for alleged wrongful acts in their capacity as directors and/or officers of the Association. Currently, neither Chapter 47C nor Chapter 47F makes this type of coverage mandatory. For a detailed understanding of the importance of carrying director and officer liability insurance, please [click here](#).

Crime and Fidelity Insurance

Crime and fidelity insurance helps Associations manage the loss exposures resulting from criminal acts such

as robbery, burglary, fraud, forgery, and other crimes committed by an Association's own directors, officers, committee members, and managers. Community Associations are not currently required to carry this coverage, but the NC legislature has been flirting with the idea over the last several years, and there is currently another opportunity this year for the legislature to enact mandatory crime and fidelity coverage.

Common gaps in insurance coverage filled by crime and fidelity insurance coverage:

- Coverage over both operating and reserve accounts of the Association.
- Reliance on the property manager's crime and fidelity insurance coverage, because the majority of "money crimes" are not the manager.
- Coverage of Board members, committee members, volunteers, spouses, bookkeepers, accountants, and cleaning staff

Umbrella Policy

This is liability insurance that is in excess of specified other policies and also potentially primary insurance for losses not covered by the Association's other policies.

Typical gaps include:

- "Excess Insurance" vs. true "Umbrella." Excess insurance is subject to all of the terms and conditions of the policy beneath it. In the event of a conflict, it is the underlying policy provisions that take precedence. There are no such limitations with an umbrella policy.
- Association has an umbrella policy, but the policy does not cover directors and officer liability or general liability.

Also, it is a good idea to purchase an umbrella policy if your community has a pool, playground, park, or is a condominium.

Workers' Compensation Insurance

This type of insurance coverage provides replacement and medical benefits to employees injured in the course of employment. Any Association in North Carolina with three (3) or more employees is required to carry this type of insurance, and if the Association has even one (1) single employee, the Board members are considered to be employees of the Association despite being volunteers.

There are many Associations that believe they do not have any employees, so they do not purchase workers compensation insurance, but remember, just because the Association classifies the person as an independent contractor does not mean the State of North Carolina will not consider them an employee. This type of insurance is generally very affordable, and it protects the Association against uninsured contractors and Association volunteers when they are injured working/volunteering on behalf of the Association. There simply is no reason not to purchase this type of insurance coverage for your Community Association.

Make Sure Your Chute is Packed Properly

Accordingly, we strongly recommend that every Community Association deliberately review their insurance policies on an annual basis and obtain Insurance to Value reports every 24 months to make sure the

Association is not self-insuring any of the gaps in coverage listed in this article. Ultimately, there is no one-size-fits-all, but all Community Associations should use their insurance professionals as a resource to get the right types and amounts of insurance coverages in place each year. Most importantly, remember that getting the right insurance coverage in place for your community is more than simply focusing on the cost of the policy, its coverage limits, and the amount of the deductible.

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