

Will you know a potential D&O claim when you see it?

Recognizing potential claims

If you see these you should immediately report them as a potential claim:

- A complaint or small claims action or other legal document
- Complaints to governmental agencies such as Fair Housing Division of HUD
- A letter, email, text or other communication demanding any type of monetary claim
- A letter, email, text or other communication demanding that actions be taken by the Board of Directors that may not be undertaken either in whole or in part
- A letter, email, text or other communication from an attorney representing an entity or person, other than the Board of Directors, seeking action, documents, or other claims
- Any incident involving actual or potential property damage
- Any incident involving actual or potential personal injury, including discrimination and defamation
- Unrelenting letters, emails or communication from a person or entity concerning an issue
- Concerns expressed by other Board members relating to action(s) taken or not taken

Protecting your Association when it counts the most

A Claim is defined by your Association's specific policy language. That said, experience teaches us valuable lessons on actions that can lead to a claim that need to be reported to your agent.

Claims arise primarily from the business of the Association as well as actions by persons acting on behalf of the Association.

Statutes in your particular state may require that the Association take specific actions and the failure to do so may lead to a claim. Likewise, your Association has governing documents such as Bylaws, Articles of Incorporation, and CC&Rs. The failure to comply with the specific requirements contained in these governing documents may give rise to a claim. Finally, there are general or implied duties that your Association must perform.

General Responsibilities

These include those that involve keeping the common areas in a reasonably safe condition. It also includes those that you employ acting in a reasonable manner consistent with their duties and responsibilities.

Fiduciary Responsibilities

The Board of Directors is vested with the responsibility to ensure there is adequate funding, there is reasonable management of the Association, and reasonable actions were taken on behalf of the Association.

When considering these duties, an important concept is the "Business Judgment Rule". When the record and evidence demonstrates that the Association's Board of Directors have acted in good faith and in a reasonable manner, the courts will not intervene and allow a jury or judge to substitute their opinion for that of the Board.

Thus, the Board should ensure they are acting in the best interests of the Association over those of individuals, including residents or Board members.

Over, please.

Statutory Responsibilities

Financial responsibilities, including audits, reserve accounts and budgets, and other obligations the Board must perform pursuant to statutes that apply to Associations in each state are imposed by statute. Claims can arise from the failure to comply with these statutory duties as well as the process that is enumerated by the statute.

In addition, due process is required in various aspects of managing the responsibilities, including transparency in decisions, voting rules and the application of a fair process to ensure each homeowner has the opportunity to voice their opinion.

Finally, constitutional responsibilities are required to be applied in all aspects of the management of

the Association. As an example, the Board and its Association may not discriminate against particular groups of people. This may form the basis of claims brought against the Board or the Association.

Contractual Responsibilities

Documents that control the operations of the Association can provide a source of claims brought against the Board and/or the Association. Examples include the agreement with a management company, vendors that provide services for the Association and maintenance agreements. The language in these contracts sets for the duties and responsibilities. The failure to fulfill these duties may provide the basis for a claim.

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