

# DIRECTORS & OFFICERS LIABILITY: NOT ALL POLICIES ARE CREATED EQUAL

As homeowners we might all agree insurance coverage for our property, often one of our biggest financial investments, is valuable and often vital at the time of loss. But when a homeowner becomes a volunteer board member there is arguably an even more essential insurance policy one needs to protect them during their integral role as a decision maker.

Directors and Officers Liability coverage (D&O) protects the volunteer Board of Directors and potentially their personal assets while making decisions on behalf of the association. The Davis Stirling Act (class code §1365.7) requires associations to carry a minimum limit of \$500,000 for D&O (\$1,000,000 for associations consisting of 101 or more units). This means legally an association must maintain coverage. Fortunately the mandatory coverage protects the individuals who serve to maintain and enhance the community. *According to Davis Stirling, a board member covered under a D&O policy with proper limits in place cannot be sued personally for decisions made as a board member.*

Not all policies, however, will protect the Board the same way. Often, policies will simply include a D&O endorsement that offers very limited protection and many policy exclusions. Common Exclusions include monetary claims, defense costs for breach of contract claims, and coverage for the property manager. The majority of claims that common interest developments experience are non-monetary, such as a claim that the board failed to purchase adequate insurance, didn't provide access to association records or selectively allowed some unit owners rights while denying the same rights to others.

**So how do you choose Directors and Officers coverage which includes coverage for the aforementioned and maintains broad protection for the volunteer board?** A stand-alone policy, one that is not simply added to a general liability policy will enhance coverage and better defend board members from a wide range of potential claims. Stand-alone policies should provide coverage for personal injury, libel and slander, both monetary and non-monetary defense, protection

for breach of contract claims, coverage for discrimination, wrongful employment practices, and should include coverage for the association's property manager when applicable.

## How can a Board of Directors confirm coverage is offered through a stand-alone policy and includes this coverage?

Contract with a broker that specializes in common interest communities. *Be sure to ask what types of coverage are included and how you will be protected at the time of loss. Confirm with your broker that your D&O coverage is in fact a stand-alone policy.*

At the end of the day, avoiding D&O claims is the best route for an association, especially if D&O policy coverage is not broad. **How can board members prevent D&O losses?** See to it that elected board members understand their duties and association rules and regulations. Do not allow emotions to get in the way of good, effective decision making. Utilize common interest professionals whenever possible. Boards should retain professional counsel to review and update by-laws, utilize experienced property managers with proper credentials, regularly consult with an accountant to keep financial order, and seek insurance agencies and brokers that specialize in common interest communities. 

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