

We Understand Community Associations.

Lazega & Johanson

LLC is a law firm dedicated to representing community associations. We believe in building and maintaining long-lasting relationships with community associations and their managers by providing personal attention and superior services. We take pride in being a part of the team of experts you rely on to ensure the successful operation of your community.

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Director's and Officer's Liability Insurance:

All Policies are NOT Created Equal!

Serving on a community association board of directors can be very rewarding, giving the power to directly impact the quality of a community. However, with that power comes the risk of being sued for decisions or actions of the board of directors. Lawsuits against corporate directors, even directors of nonprofit corporations like community associations, have been increasing significantly over the past several years. State law provides some protection against personal liability for directors of nonprofit corporations, but state law does not prevent lawsuits from being filed against boards of directors and the great inconvenience and expense that comes with those lawsuits.

By now, just about every community association director and manager knows that insurance is available to community associations to insure against various risks. Association directors and managers frequently focus primarily on property or casualty insurance because it typically represents the greatest part of the total insurance cost, overlooking the extremely important Directors' and



Officers' ("D&O") Liability Insurance Policy. Often, boards of directors and managers will just accept the D&O coverage bundled in a package with the property or casualty insurance policy. In some cases, this may be appropriate, but associations can also obtain separately written D&O coverage, which may provide much greater coverage than a bundled policy. The key for community association directors is to review the D&O policy and look for the most comprehensive coverage available.

What makes one D&O policy better than another? Ideally, D&O liability insurance policies will protect past and present board members, employees, volunteers, property managers and the community itself from lawsuits arising out of the operation and management of the association. Among different insurance carriers there can be significant distinctions in coverage and, more importantly, exclusions from coverage. Here are some benefits that

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We are committed to your success.

Our attorneys and staff have decades of experience and are proven leaders in their fields. Our attorneys are uniquely qualified and have been recognized on both a national and local level for their knowledge and commitment to their respective fields. We value the relationships we have with our clients. We are proud to be a part of the team of experts they rely on, and we work hard to maintain those relationships everyday.



help separate very good D&O policies from other D&O policies:

- **Coverage for non-monetary damage claims.** The typical lawsuit involves one party suing another for monetary or money damages, seeking to recover money for an alleged wrongdoing. However, commonly with community associations, suits by homeowners do not involve money damage claims, but instead involve claims requesting injunctions or equitable relief. These situations can include owners suing to prevent boards from increasing assessments, to force boards to hold meetings or be bound by community efforts to remove directors and appoint replacements, to prevent boards from undertaking capital improvement or maintenance projects, and similar items. Many D&O policies exclude coverage for these types of non-monetary damages claims, covering only claims for money damages. However, some D&O policies provide very valuable coverage for these claims by providing for the cost of defense, which means the insurer pays the attorney's fee to defend against the claims.

- **Coverage for past, present and future**

board members, committee members, volunteers and property managers.

Most management contracts require associations to indemnify the management company for acts undertaken on the association's behalf, and some D&O policies provide direct coverage for the acts of the association's property manager.

- **Defense cost coverage outside of policy limits.** D&O policies commonly provide a \$1,000,000 limit, but some policies include attorney fee defense costs in that limit. This means that, if the association gets embroiled in extreme litigation and the insurance carrier pays \$500,000 in attorneys' fees defending that litigation for the association, only \$500,000 is left to pay a claim if the association loses or settles that litigation. Policies that provide for defense costs to be outside of policy limits provide a great benefit.
- **Defense of breach of contract claims.** It is not uncommon for associations to have disputes with their vendors, and these disputes occasionally end up in litigation. Most first impressions are that insurance would not defend board disputes with vendors over contracts, but some D&O policies will provide legal defense for lawsuits by vendors over contract disputes. The policies typically do not



INNOVATORS.

The firm prides itself on taking chances and being the first to try something new that changes industry practices and opportunities. Our goal is to meet the goals of our clients and do whatever it takes to make sure that those goals are not compromised or neglected due to financial or other restraints. We consistently make efforts to think outside the box to find ways to assist our clients in meeting their goals.



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cover any liability if the association loses that contract dispute, but providing defense for those claims is a significant benefit.

- **Ability to utilize the association's attorneys.** Many carriers use limited panel counsel or captive insurance defense counsel to handle defense of their lawsuits. These attorneys often are generalists who may handle community association defense in one lawsuit and a car accident case in another lawsuit. Often, associations greatly prefer that their lawsuits be defended by the association's attorneys, who have history with and knowledge of the community, familiarity with the particular lawsuit, and a skill or expertise in community association law. Some D&O insurers either already include the association's attorneys on their approved panel counsel lists or will allow the association's attorney to defend lawsuits against the association, providing great service and protection to the association.
- **Discrimination claim coverage.** Many D&O policies exclude coverage for discrimination claims against the association. This is concerning because it is becoming increasingly common for owners to allege discrimination in response to collection actions, denial of architectural modification requests, or covenant enforcement actions by associations. In our experience, these

claims are overwhelmingly without merit, but defending these lawsuits is time consuming and costly for associations. Some D&O policies will provide very valuable coverage for the defense of these lawsuits.

Good D&O liability policies offer communities protection and peace of mind. Lawsuits are increasingly common against community associations, and, unfortunately, even baseless lawsuits require a significant amount of time, resources and cost to defend. If a D&O policy does not cover or excludes coverage for particular claims against associations, then the associations bear the cost of defending those claims. Community associations are best protected by D&O policies that provide the broadest range of coverage possible in the market.

Boards of directors should thoroughly review D&O policies before purchase or renewal to evaluate the level of coverage being provided. Community managers and attorneys are skilled and knowledgeable resources that boards also should consult in the insurance review process and the selection of insurers to provide the greatest level of coverage. As with much in life, more coverage is better than less.

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