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Community Association Risk Management

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A board of directors for a community association is responsible for managing the financial well being of the association. When managing the Association's finances, the Board not only is responsible for establishing the budget for the Association's operating expenses, but also taking steps to minimize any risk within the Association that creates potential liability exposure. The importance of risk management has become magnified over the past several years as the cost of insurance has dramatically increased in the post-9/11 period. Accordingly, we recommend that our community association clients engage in various risk management techniques to reduce their association's liability exposure.

Insurance coverage is a necessary and wonderful tool to reduce the Association's potential exposure to a substantial claim. Unfortunately, the cost of insurance itself is a large expense in most community association budgets. Generally, when an association submits a number of claims to its insurer, it may either lose its coverage or the cost of the association's insurance policies will increase substantially. In order to avoid substantial increases in insurance premiums,

a board should protect the association's insurance policy from repetitive or frivolous claims. Therefore, we recommend that our community association clients engage in the following risk management techniques: 1) risk avoidance; 2) risk control; and 3) risk transfer.

Risk avoidance is an important tool for a community association to reduce its liability exposure. In order to reduce the risk of a liability claim against the association, we recommend that the association contact its insurance carrier to request a risk management survey of the association's property. Most insurance carriers are willing to come to the association's property to inspect it and advise the association of any potential liability risks that may be present on the property. The insurance carrier may also outline remedial measures that the association may wish to take in order to reduce these risks.

Risk control becomes important once a claim is filed. Effective risk control requires the association to inspect the property on a regular basis and to maintain up-to-date records that detail the Association's

maintenance program, which include a log of the regular property inspections. It is important that the association retain its maintenance records to show that the association has not been negligent in its maintenance duties on the property. Likewise, the inspections log should reflect that the Board and/or management have been inspecting the property on a periodic basis. These records will demonstrate that the association has not been negligent in its oversight of the property.

Risk transfer is another important step that is available to most associations to minimize the association's liability exposure. Effective risk transfer techniques focus on drafting contracts and agreements that require the association's members and third parties to take on the responsibility for insuring various components within the association or to accept responsibility for certain risks that may be incident within the association's property. This is most easily done in a condominium, where many association documents will permit the Board to adopt rules and regulations that make individual members responsible for the insurance deductibles incurred by the association under certain circumstances. If an association's governing documents permit it, an association may specify through an insurance policy resolution that individual members are responsible for any losses that arise as a result of conditions that exist on their property or that are caused by the negligent maintenance of their property.

The association may also advise individual members that they can obtain their owner insurance coverage for their units or homes

to provide protection against any physical loss that may occur on their property. Increasingly, some insurance companies have begun to change their individual homeowner policies to limit the scope of coverage. Specifically, some carriers may include limitations in their homeowner's or HO-6 policies that exclude coverage of an owner's loss unless a claim is filed under the Association's master policy. Even then, the amount covered by insurance is often limited to the amounts not covered by the association's master policy (including the deductible). Nevertheless, passing some of the association's insurance costs to its members by enacting an insurance deductible policy resolution may reduce the overall number of claims filed under the association's insurance policies.

Managing risk within a community association is often a daunting task, and involves a number of technical and complicated issues that often require consultation with both the association's insurance agent and its legal counsel. We encourage you to review your association's maintenance program and insurance coverage to determine whether the board may take action to reduce the association's liability exposure. If you have any additional questions on risk management or insurance, you may contact any one of our community association attorneys.