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Community Association Risk Management

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As we reported in May of this year, several changes have occurred in the community association insurance market. Consequently, as the cost of insurance continues to skyrocket throughout the industry, we recommend that our community association clients engage in various risk management techniques to attempt to reduce their association's financial exposure from incidents that occur on the association's property.

While it is great to have insurance coverage to protect the association against a claim, it is also important to protect the association's insurance policy from repetitive or frivolous claims. 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. 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 obviously an important step for any community association to take to avoid claims. Risk avoidance focuses on

the steps that an association can take to minimize any possible liability issues that may be present on the property. In order to reduce the risk of a liability claim against the association's policy, we recommend that the association contact their insurance carrier to request a risk management survey of the association's property. The association's insurance carrier should be willing to come to the association and advise the association of the 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.

In addition, the association should attempt to control risk in anticipation of the day that a claim is filed. In particular, risk control requires the association to maintain up-to-date records and to inspect the property periodically. 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, a log of the inspections of the property should be kept to document that the association's Board of Directors and management have been inspecting the

property on a periodic basis. Again, these records will demonstrate that the association has not been negligent in its oversight of the property.

A third important step the association can take to minimize the risk that claims are filed under its insurance policies is to transfer insurance risks from the association to the individual members. This is most easily done in a condominium setting, where the association can take steps to make community association members responsible for the insurance deductibles incurred by the association. In particular, if an association's governing documents permit it, an association may specify through an insurance policy resolution that individual owners 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 should also advise individual members that they should obtain independent 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 provide coverage only when the Association's master policy deductibles are not covered. That would mean that even though an owner may have their own individual coverage for their unit or dwelling, their policy would not cover the owner's loss unless a claim is filed under the Association's master policy. Even then, the amount covered by insurance would be limited to any master policy 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 and such a policy provides members with an outline of the Association's insurance claim procedures.

Unfortunately, this is only a brief description of various issues that your association may wish to examine. If you have any additional questions on risk management or insurance, you may contact any one of our community association attorneys.