Section 3
Association Management

Many condominium associations do not have the number of units to support full- or part-time management by a professional community association manager. The Condominium Act does not require the board of directors to hire a licensed community association manager. Therefore, the association may choose to be self-managed. Other communities that are larger or provide a wider range of unit-owner services may opt to hire a professional manager, on a part- or full-time basis. The following sections review both management structures, as well as other operational issues.

Self-Management

The Board's Leadership Role

In any condominium association, the board's role is to provide the leadership necessary to fulfill the fundamental purpose of the condominium association—to protect, preserve, and enhance both the physical assets of the association and the quality of life of the residents.

Depending on the governing documents, the board's role and scope of authority can be broad or specific. Some boards have the same authority as a corporation, some boards have their powers precisely stated, and some don't. Generally, however, boards have the authority to set goals, standards, and policies for the association; to enforce the governing documents; to maintain the property; to maintain the association's financial stability; to purchase adequate insurance; to enter into contracts for services; to create and supervise committees; and to conduct annual meetings and board meetings.

Start with a Good Board

The effectiveness of a board depends on the effectiveness of its individual members, so it's important to start with competent, intelligent, mature people who are willing to work hard and make sacrifices. The condominium association is neither a civic league nor a social club. Running it requires making hard decisions and being involved almost on a daily basis. Therefore, candidates should not be selected casually.

Fiduciary Duty

As a managing board, the directors operate in a fiduciary capacity for the unit owners. This simply means that the board makes decisions in the best interests of the association. Most of those decisions will affect the operations area.

The duty of loyalty keeps the board from using their position to take advantage of the condominium association. The board cannot make decisions for the association that benefit their own interests at the expense of the association and its members.

The duty to exercise ordinary care means that the board must perform their duties in good faith, in a manner they reasonably believe to be in the best interest of the association, with such care as an ordinary prudent person in a similar position under similar circumstances would use. In short, the board must act in the best interests of the association and act reasonably.

In the dual role of a self-managing board, the directors are not only the executive organ of the association with chief responsibility for its well being, but they also have to accomplish all the management functions in the best interests of the association's unit owners. Thus, it is important that the self-managing board promote good public relations with the larger community, search for educational opportunities for board members, and work to identify unit owners who would make good future board members.

Solving Problems

Many of the concerns that will come before the board can roughly be classified into two categories: people problems and property problems. People problems can usually be resolved with personal attention, but property problems generally require spending money.

Most people problems stem from a lack of understanding of the association rules. Too often prospective purchasers are looking only for an easier lifestyle and do not read the condominium association documents before purchasing, or even after purchasing. Try to make some sort of contact with new residents shortly after they move in. Let them know the rules in a pleasant but matter-of-fact manner.

Conducting Operations

As a self-managed condominium association, one of the board's primary roles is managing the operations of the association. That means they'll be implementing as well as formulating policies, and they'll be the primary contact with residents, contractors, local officials, and others. They will do their own research when the board needs to be educated on an issue—everything from studying the governing documents to brushing up on facilities maintenance.

Even the most seasoned professional condominium association manager will turn to outside experts on a regular basis, and the same is true for self-managing boards. They'll need a competent attorney, accountant, insurance agent, and engineer at their disposal. Additionally, they'll want the expert advice of numerous service providers like electricians, plumbers, building contractors, and others. Seeking the advice of outside experts and considering their recommendations when they make decision for the association is a good management practice. It shows that the board has exercised sound business judgment—a fundamental element of their fiduciary duty. We will review the role of other professionals later on in this course.

Part of the management role is administering the finances of the association; the board will want to work closely with the association attorney and accountant, stay within established policies regarding the expenditure of funds, and ensure that they understand them. In all matters of finances, the board must always remain above reproach.

Other routine operational matters will include:

- Awarding contracts
- Verifying work properly done before payment
- Deciding between insurance coverage and the amount of risk the association can afford to assume
- Establishing the need for and cost of professional property inspections
- Deciding on accounting methods (cash, modified cash, or accrual)
- Deciding the best way to collect assessments
- Creating procedures for delinquencies
- Determining cash-flow control
- Improving traffic patterns
- Funding reserves realistically

Conclusion

Condominium association board members shoulder a significant responsibility for the governance of their communities. Self-managers have the added responsibility of also managing their associations. Through education, reliance on experts, and understanding their association's governance and operational needs, they can be successful in this important endeavor.

Certain issues may be referred to the Division of Florida Land Sales, Condominiums and Mobile Homes for investigation, arbitration or mediation. For more on what items fall in the Division's jurisdiction, call the Division's Bureau of Customer Service at 800-226-9101 or e-mail the Division at FLS.customerserviceunit@dbpr.state.fl.us

Professional Association Management

Because of the numerous and complex tasks involved in running a community association, many boards opt to hire a professional community manager. Although there is no universal means of determining whether your condominium needs an on-site manager, larger associations, or associations that manage large budgets and/or a large amount of common property may want to consider hiring one. Although larger associations have more long-term maintenance and capital reserve obligations and more pressing day-to-day management problems than small associations, associations of all sizes can benefit from the administrative, diplomatic, financial and political skills of a full or part-time professional to help make association operations run smoothly.

In Florida, if the association has more than 50 units, or an annual budget of $100,000.00 or more, the professional community association manager must be licensed under Chapter 468, Florida Statutes.

Manager skills and services

The board may identify a varying range of duties as responsibilities for the professional manager. Because the manager will be dealing with unit owners, the board should not only be concerned with the services the manager will provide, but also with the manner in which they will be provided. The manager—perhaps more than any other professional—needs good people skills. The board should look for a demonstration of these skills in the selection process.

Select a Candidate

After the interviews, it is important to review the candidates based on objective criteria. Some criteria that can be used include the degree of specialization of the professional. For example, the board can inquire whether a manager candidate is a licensed Florida Community Association Manager (CAM), or has a Certified Manager of Community Associations (CMCA®) designation, an Association Management Specialist (AMS®) designation or a Professional Community Association Manager (PCAM®) designation. The board can also determine the range of services available, the extent of the support staff, the comments of other clients, the enthusiasm of the professional, the fees charged, the willingness of the person to meet with the association after normal business hours, and the personalities of the people who will deal directly with the association.

Key Issues a Board Should Discuss Before Retaining a Professional Manager

- Does the community need a full or part-time professional manager?
- Is the association willing to pay more for an experienced manager?
- How many candidates will the board or search committee interview?
- How much is the board willing to spend on the search process?
- What is the association's position on certain terms in an employment contract – for example, fixed vs. open term, severance pay, ability to hire and fire, additional benefits, etc.?
- Should the association check out secondary references?
- Should the board or search committee check out the educational background of each candidate?
- Do board and search committee members have a solid understanding of the key qualifications and characteristics they want in a manager?

The people skills of a manager are more important than those of an auditor because a manager will deal with owners frequently. The board, however, should feel comfortable with any professional it hires. It should be able to easily communicate with the professional and understand the advice he or she gives. The professional has an obligation to translate language used in the profession to language used by ordinary people. Well-qualified professionals are able to do this. If the board cannot understand a candidate, they should not hire the candidate.

Once a decision is made, the person the board chooses for the job should be contacted immediately to see if he or she is still interested in the position. An offer should be made contingent upon the parties agreeing on precise terms of the contract.

Professional Manager Services

There are four general areas in which managers perform services. Managers of small associations may perform only a few of these services and managers of large-scale associations may perform all of them.

1. ***Fiscal***—Billing and collecting assessments, paying bills, preparing the payroll for on-site personnel, preparing financial reports, budgets and reserve analyses, and maintaining financial records are some of the fiscal services managers can provide.
2. ***Administrative and clerical***—Administrative and clerical services include arranging and attending annual meetings, board meetings, and committee meetings; maintaining the member roster, records, and files; preparing and processing transfer information on resale; preparing and distributing the resident information packet; preparing and distributing the newsletter; preparing special mailings; photocopying; preparing bid specifications; providing a monthly status report to the board; reviewing standard operating procedures; conducting an inventory of association property; providing after-hour emergency answering; recording and processing work orders; and assisting in hiring, firing, and supervising on-site personnel and contractors.
3. ***Building maintenance***—Managers sometimes provide building maintenance services such as janitorial, plumbing, and painting services. More often, they are provided by on-site employees or outside contractors. The manager can prepare specifications, identify contractors, solicit proposals and present bids to the board for its approval. The manager can also advertise, interview and recommend on-site staff if the work is to be done in-house and monitor the work of contractors and employees.
4. ***Grounds maintenance***—Grounds maintenance services include maintenance of landscaping, recreational facilities, trash collection, and sweeping. Like building maintenance, ground maintenance is generally performed by on-site employees or outside contractors. Again, however, the manager can assist in a variety of ways as discussed above. The manager can also provide periodic grounds inspection reports.

Assessment Collection

Prevent Delinquent Payments

Members who understand the association's financial needs are more likely to pay their assessment fees on time. The board can easily communicate financial information to the members by including them in the formulation of the budget and by soliciting input from committees. However, most associations have difficulty getting 100 percent of their members to pay their dues on time—despite their communications efforts. And late payments from only three percent of the ownership can cause cash-flow crises for associations with tight budgets. For example, a condominium with 100 units and a monthly assessment fee of $90 will lose $270 each month if just three percent of the unit owners fail to pay on time.

Payment Systems

How can the association best collect the assessment funds from the unit owners? Some of this decision relies on how much each system costs the association. Here is a brief overview of the various methods an association can use to collect assessments:

Blind faith. Associations notify each unit owner of the amount due and the payment date via a letter. Unit owners are expected to mail or deliver their payments on or before the due date. This is a great method for small, tightly-knit associations whose members live on-site and have a strong record of timely assessments.

Drop-off method. Some associations allow unit owners to drop off their checks at the manager's office. This method offers a great deal of convenience to the owners, but can cause the manager to be interrupted frequently. Some condominiums use a drop box, which allows a secure location to collect payments.

Here are some tips to prevent delinquent payments:

- Develop a budget line item for uncollected assessments.
- Use specific examples when explaining the budget to other unit owners, rather than just listing "maintenance and repair," note what common property elements are getting repaired and how much each costs.
- Keep members informed – not just during "budget season" but noting financial issues in each newsletter, at each meeting, and even in the welcome package you provide to new owners in your condominium.

Automatic bank transfers and preauthorized drafts. Some associations offer to automatically deduct assessment amounts from members' checking or savings accounts. This allows for reliable and timely payments, but may carry a small fee for each payment received and depends on a moderate comfort level with technology among unit owners.

Charge cards. Associations with a large number of non-resident members or with quarterly billing would be good candidates to consider accepting charge cards. Associations can charge cards on the appropriate payment date, which leads to reliable and timely payment. This process can carry a cost to the association, and can lead to some hassles over reversed transactions and additional paperwork.

Payment coupon books. All unit owners receive a bound booklet of payment notices, which contain their account number, unit address, amount due and due date, late fees, a mailing address for payment and a stub for the unit owner to keep for their records. This allows a "lower tech" approach to assessment collection, yet still gives unit owners a convenient means to track their payments. There is some cost associated with the production of payment books and processing payments received.

Collecting Delinquent Payments

Once a firm due date has been established, it is important to treat all members the same in assessing any penalties resulting from late or non-payment. Credit and collection agencies claim that associations are much more likely to collect unpaid assessments that are 15 to 30 days overdue than debts that are 90, 120 or 180 days overdue. Therefore, condominium associations should immediately send late notices and letters to owners who are delinquent with their payments. Here are ways to effectively communicate with unit owners regarding payment:

Personal letter. Start by sending the unit owner a firm, but polite note from either the manager or treasurer. Personal letters are particularly effective when the late payment is a result of a simple oversight on the part of the unit owner.

Form letter. For second and third notices, a form letter is appropriate, and can contain “fill in” spaces for the owner’s name, assessment due and any late fees.

Final notice. The final notice should be mailed out 30 days after the assessment is due, and should contain stronger, more formal language. The letter can mention the association’s prerogative to now add legal fees to the assessment amount, and it should be sent by certified mail. Make sure your association is consistent in the legal action that is taken on the association’s behalf.

Under the **Federal Fair Debt Collection Practices Act**, the board can send letters to the owner/member, and there is no particular form required. However, if the professional community association manager is sending out a letter, there is specific disclosure language that is required in any demand for payment. The same is currently true for an attorney who is handling collections for the association. It is important to contact an attorney to determine the content of the required disclosure language.

Rules

All condominium associations have restrictions that are designed to protect property values and maintain a high quality of life. Condominium associations are sometimes criticized in the press for having too many restrictions. However, they help ensure that the residents’ expectations for their home and neighborhood are fulfilled.

The restrictions are found in the declaration (master deed), the bylaws, the rules and regulations, and occasionally in the Articles of Incorporation. Restrictions in the declaration are often called covenants. Restrictions created by the board are often called rules and regulations. In this section, restrictions created in the declaration will be called restrictions and restrictions created by the board will be called rules.

Rules and restrictions vary among condominium associations. The following topics, however, are often addressed: pets; parking; maintenance and use of units; the architecture, structure, and appearance of the units; leasing; use of common facilities; and noise.

Creation and enforcement of restrictions and rules is one of the most emotionally charged areas association leaders will face. Therefore, it is important for the condominium association to have established procedures for handling these matters. It also is important that those procedures encourage amicable dispute resolution.

Rule Enactment

There are several principles a board must keep in mind when creating a rule:

1. ***The rule should be necessary.*** Residents often resent the proliferation of rules in a community. If an actual problem exists, the board should address it. It is generally unwise to create a rule simply because one neighbor is posing a problem; rather, the board should first work with the owner to find a solution to an individual problem or concern.
2. ***Before enacting a rule, the board should verify that existing rules and restrictions are inadequate to address the problem.*** Sometimes there are general provisions in the governing documents, such as provisions permitting the board to take actions against nuisances. If such a provision exists, the board may be able to take action against owners of dangerous animals without enacting an additional rule.
3. ***The rule must not be in conflict with the law or other provisions in the governing documents.*** The board should consult with an attorney before enacting a proposed rule to make sure it is not in conflict with the documents or the law. For instance, in enacting a rule the board must not violate the Federal Fair Housing Act, which prohibits discrimination against those with physical handicaps. An example is a rule prohibiting pets or requiring leashes, which must accommodate seeing-eye dogs.
4. ***The rule should be clear and no broader than necessary to address the problem.*** The residents will not be able to comply with a rule unless they know precisely what behavior is required or prohibited by the rule.
5. ***The rule should be reasonable and applied in a uniform manner***. It is sometimes difficult to determine whether a court will consider a particular rule reasonable. For example, some courts have concluded that prohibiting recreational vehicles in a condominium community is reasonable and others have concluded that it is not. Courts generally agree, however, that rules that only apply to one or a few owners, or that are unfair to a segment of owners, cannot be enforced. While most courts give the board some latitude in rules enforcement, courts are more likely to enforce rules that are reasonable and that treat owners similarly.
6. ***The board should build consensus for the rule before it is adopted in order to gain acceptance and compliance***. The community should be part of the rule-making process. Residents should understand the need for the rule before it is enacted. If residents do not believe the rule is necessary, it will be more difficult to enforce the rule.
7. ***The board should enact a rule through resolution of the board***. After considering all of the above points, if the board decides to enact a rule, it should do so by Resolution of the Board. A resolution is a motion that follows a set format and is formally adopted. The resolution process provides a thorough, deliberate approach to making rules; provides for consistency in making and wording rules; and provides a formal record of all rules made.
8. ***Evaluate the human and financial resources involved in rule enactment***. Enacting a rule will require an investment of both human and financial resources. Because an attorney should review the rule before it is enacted, the association will incur legal expenses before it enacts a rule. There will be additional costs associated with the rule after it is enacted. Once a lawful rule is enacted, it generally must be enforced. There are expenses involved in conducting internal rule enforcement procedures and great expense if the violation must be litigated. It also takes human resources to enforce

rules. The association may have a rules enforcement committee whose task it is to identify rule violations and bring them to the board's attention. The internal enforcement procedures also will require the board to attempt to obtain voluntary compliance and conduct hearings. Because rule enforcement can require substantial human and financial resources, the board should not enact a rule unless it is necessary.

Rule Enforcement

There are a series of steps a condominium association should take in order to meet requirements set in governing documents and to ensure due process for all unit owners.

The first step in the procedure is the filing of a complaint. The procedures should provide that any resident, group of owners or residents, or committee, can file a complaint. The association may have a Rules Enforcement Committee whose job is to periodically inspect the community for violations of rules and restrictions and bring these violations to the board's attention.

The association should send a ***Notice of Violation*** to the party noted in the complaint. The Notice of Violation is a legal document. The notice should contain:

1. A description of the nature of the alleged violation.
2. A statement identifying which provision of the governing documents is allegedly violated.
3. A reasonable time in which to abate the violation.
4. A statement that a hearing will be held on a specified date if the alleged violation is not abated.

The *Notice of Violation* should be polite. The goal is to gain compliance and to avoid a hearing. If the president and the owner are on a first-name basis, the board should address the letter using the owner's first name. However, if the parties are not on a first-name basis, using the first name may sound disrespectful.

The board should treat the owner or resident respectfully throughout the process. The letter should assume that the owner is innocent or unaware of any rule violation. If the person wants a hearing, but the date set by the board is not convenient, the board should reschedule the hearing, particularly if the person is willing to stop violating the governing documents until the hearing. There are two types of hearings, listed below.

At the *enforcement hearing*, both the complaining party and the rule-breaking unit owner should be encouraged to present their case. All participants should be treated courteously and professionally.

If the Rule Enforcement Committee, or the board if there is no such committee, determines that a rule was broken, the committee, or the board, can enact sanctions against the unit owner. Generally, the punishment must bear a reasonable relationship to the violation. The committee, or the board, may also impose a fine, if the fine is reasonable in relationship to the nature of the violation and there is documentary authority for the imposition of fines. Determining what constitutes a reasonable fine is often difficult. Also, under Florida statutes, there are hearing and notice requirements before a fine can be imposed. Therefore, the board should seek advice from an attorney when creating a schedule of fines. Lastly, the committee, or the board, should send the unit owner a notice of decision via registered mail stating its decision and the reasons behind it.

Conclusion

The restrictions and rules in the governing documents are created to help maintain property values and enhance the quality of life in the community. Failure to enforce the restrictions and rules or enforcing them in an arbitrary and unreasonable manner will not accomplish the goal. On the other hand, if the board informs the owners of the restrictions, explains their purpose, and enforces them in a fair manner, the board can help foster pride in the community.

Maintenance

Managing common elements is one of the primary responsibilities of most condominium associations. Well-maintained communities meet the needs of the individual residents, preserve and enhance property values, and foster a sense of community pride. As with other aspects of condominium association operations, the primary responsibility for maintaining the facilities rests with board members.

Boards often delegate their maintenance obligations to others. Even if they do, however, it is the board members who are legally responsible for maintaining the common elements. Therefore, board members must understand the issues relating to maintenance, repair, and replacement.

What Should the Board Maintain?

After the board has reviewed the governing documents and Florida law, it must identify all the specific physical assets it is obligated to maintain. When identifying the physical assets, it should consider the following:

Common real property. Common real property the association owns or is obligated to maintain can include swimming pools, tennis courts, clubhouses, landscaped areas, common grounds, building exteriors and interiors, and on-site improvements in a condominium.

Common personal property. Common personal property the association owns or is obligated to maintain can include community-owned vehicles, mowers, furniture, swimming pool equipment, and office equipment.

Common services. In some communities, the board provides common services such as trash removal, recycling, and custodial services. It provides them either because the governing documents require it to do so or because the board chooses to provide them to maintain the association's physical assets or because of economic benefits.

Identify specific information

Once the board has identified the association's physical assets, it should prepare an inventory. The inventory should include the date of purchase, warranties, description, quantity, original installer, builder or service contractor, cost, special maintenance needs, and estimated replacement data. An inventory is not only useful to establish maintenance needs, but is also valuable if the board needs to file an insurance claim.

The inventory can be prepared by physically inspecting the property, examining available building plans and specifications, reviewing reserve studies, examining available maintenance records, and reviewing product or equipment information supplied by the manufacturers. The board also can interview authors of any reserve studies, maintenance employees, and contractors for additional information.

Set maintenance goals

In order to determine its maintenance needs, the board must set goals for the desired level of maintenance. In setting goals, the board should:

1. Review the governing documents to determine if certain levels of maintenance are required.
2. Seek input from the community through questionnaires, meetings, focus groups, and interviews to determine the needs of the community. There are two advantages to soliciting unit owner input as early in the process as possible. First, morale may increase simply because the owners discover that the board recognizes a problem and intends to do something about it. Second, the board may need the owners to approve an increase in general assessments or a special assessment. They are more likely to support an increase if the board has included the owners throughout the process.
3. Identify the maintenance level the manufacturer or supplier recommends for products, equipment, and services.
4. Discuss recommended maintenance levels with current or prospective contractors, management, and staff.
5. Be prepared to make compromises based on a realistic assessment of available resources. When establishing maintenance goals, the board should set minimum standards of acceptance.

Establish separate maintenance programs

There are four types of maintenance. The board should identify a separate maintenance program for each.

1. **Routine maintenance** includes the basic housekeeping chores that are conducted on an ongoing basis. These activities include mowing the grass, routinely trimming shrubs and trees, vacuuming the halls, and keeping the grounds clean.
2. **Preventive maintenance** is performed periodically to avoid disruptive breakdowns and to prolong the useful life of the physical asset. This includes rebuilding pool pumps before they wear out, cleaning problem sewer lines every month to avoid backups, treating susceptible wood for termites, and applying appropriate chemicals to prevent the growth of disease and weeds. A successful preventive maintenance program

should result in lower long-term costs and extend the useful life of major equipment, components, and landscaping.

3. **Deferred or scheduled maintenance** activities are those the board anticipates will occur as physical assets wear out or break. These activities include painting, pool plastering, and routine repair and replacement of major components and equipment.

4. **Emergency maintenance** involves maintenance or repair activities that arise on an unscheduled basis, such as an unexpected plumbing problem, a landscape problem that involves flooding, unexpected pest infestation, or a sudden roof leak. It is important for the board to determine in advance who is responsible for initiating emergency requests and who is responsible for funding the repair.

Conclusion

Most association leaders find it necessary to obtain professional help to perform their duties. Too often, however, because of poor hiring and evaluation practices, professionals are not treated as professionals and thus, are unable to perform their jobs efficiently. This results in frequent turnover of professionals.

Frequent turnover produces at least three negative results. Association leaders waste their time by being constantly involved in the hiring process, the community loses the continuity that professionals can provide, and the community gains a bad reputation in the professional community that will make it more difficult to attract competent professionals. If the association follows the suggestions in the next Section for hiring and evaluating professionals, it is unlikely to have these problems.

Insurance & Risk Management

There are four major areas in which condominium associations are exposed to loss:

1. Loss resulting from damage or destruction of the association’s property
2. Loss resulting from having to pay someone who is injured by the association, which is called liability loss
3. Loss resulting from misappropriation of funds
4. Loss of income

An association can reduce its risk of loss in each of these areas through a risk management program that combines risk control techniques and insurance.

Risk control techniques are designed to reduce both the likelihood and extent of loss. One method of risk control is to implement strict fiscal controls that reduce the likelihood of

> **Condominium associations often fail to do the following:**
>
> - Accurately determine the value of all real and personal property
> - Read leases to determine who is responsible for maintenance and insurance of real or personal property
> - Account for property at off-site locations
> - Account for electronic data processing hardware and software
> - Account for property that is in the care, custody, or control of the association but is not owned by the association
> - Correctly assess the value of security and communication systems
> - Understand potential problems with equipment
> - Consider mortgage lender requirements
> - Consider mandates imposed by municipal building codes

embezzlement. Another method is to install a fire sprinkler system. Because it is impossible to reduce all risk of loss, however, the association needs to purchase insurance.

Property

An association can experience loss when its real or personal property is damaged. **Real property** includes things that are not movable, such as buildings. **Personal property** is generally movable property, such as lawn furniture, computers, appliances, and valuable papers and records. These definitions vary among the different insurance policies, however. Thus, it is important to read the policy's definition of real and personal property.

In order to identify property the association owns or is obligated to maintain, the board should start with the governing documents and Florida law. Governing documents generally describe this property and state statutes may lend additional guidance. Even if the association does not own any common elements, governing documents usually require the association to maintain and insure it. Therefore, the association will experience loss if that area is damaged or destroyed.

Next, the board should take an inventory of all other real and personal property the association owns or maintains. For example, the association may have an obligation to maintain an underground irrigation system, sewers, fences, swimming pools, walkways, elevators, sprinklers, light poles, and driveways. It may also own lawn furniture, golf carts, maintenance equipment, computers, or vehicles.

Liability

An association can suffer loss if a court determines it is liable for property damage, bodily injury, or personal injury through the association's negligence. An association can also suffer loss even if it is not found liable if it has to pay the cost involved in defending the lawsuit. It is significantly easier to determine the association's exposure to property loss than it is to determine its exposure to liability loss. It is easier to value identifiable property than it is to anticipate the range of potential injuries to unidentifiable property and human beings. Jury awards and attorneys fees also make it difficult to predict exposure to liability.

An association also can be liable under state workers' compensation statutes for injuries incurred on the job. Some of these statutes hold the association liable to independent contractors and volunteers. Workers' compensation statutes vary among the states regarding both the extent of liability and the type of volunteers or independent contractors that are considered association employees. Therefore, the association must be familiar with the worker's compensation law when attempting to determine the extent of its exposure.

Loss of Income

Finally, depending on the functions an association performs, it might suffer loss by having its income reduced. For example, if the association operates a clubhouse restaurant that is damaged by fire and closes during reconstruction, the association will not only incur loss for damage to its property, but also for the loss of income during the reconstruction process.

In determining the extent of the association's exposure to loss, the board should consider the length of time the income source is likely to be shut down, whether the shut down is partial or total, the amount of the reduction in revenues, the expenses that would be incurred in the event of shutdown, and the length of time it will take to resume pre-loss levels of revenues and activities.

Once the board has identified the extent of the association's potential exposure to loss, the board must identify who has the authority and obligation to address the problem. There are two basic approaches to reducing the risk of loss: one is by controlling the risks of loss and the other is purchasing insurance.

Insurance

Because it is impossible to eliminate all risk of loss, the association also must purchase insurance. A thorough discussion of insurance is beyond the scope of this introductory course. However, some basic information about the insurance contract will help the board decide what additional information it needs to obtain before purchasing insurance.

The insurance policy is a contract between the insurance carrier (insurer) and the association (insured). It is like other contracts because it is an agreement between two or more parties and is enforceable by law. The policy should reflect the individual needs of the community. It is essential that the board understand not only what is and is not covered by the policy, but also what the association's obligations are under the policy. For example, if the association fails to file a claim in a timely manner, the association may not be able to recover for the losses suffered.

Fortunately, insurance contracts have become simpler in recent years. One problem the board may encounter in attempting to understand the provisions of the contract is that the contract, agent, or broker may use outdated terms. For example, the old Special Multiperil Policy is now called the Commercial Package Policy and the old Comprehensive General Liability policy is now called the Commercial General Liability policy. The words "cause of loss" have replaced the word "peril," and the term "risks of direct physical loss," "special form," and other terms have replaced "all risk policy." If the board does not understand terms the insurance representative is using or the terms in the policy, it should ask the agent to explain them. If the board members cannot understand their agent, they should get a new one.

Basic policies generally contain common declarations, such as the name and address of the insured. They also contain common policy conditions applicable to all coverages, such as the time in which to file a proof of loss and the consequences of not paying a premium on time. Beyond that, the terms of the policy depend on the coverage selected by the association. The association might select a basic policy and then purchase endorsements. For example, an endorsement can be added to cover certain loss to broken glass that is not covered by a basic property policy.

Property Damage or Destruction Exposure

Examples of techniques for reducing the number and extent of property losses include making sure that all walkways are in good repair and that fire sprinklers, fire extinguishers, and security systems are functioning properly. Having a disaster management plan—particularly in areas exposed to hurricanes or floods—can also reduce the extent of the association's exposure to loss. For example, if an individual living in the community knows how to turn off the gas in an emergency, that person may prevent a fire and resulting loss. Insurance agents, managers, and risk management specialists can provide additional risk control techniques.

The basic **Commercial Package Policy Insurance** is usually a two-part policy that includes coverage for both property damage or destruction and liability losses although some insurers include additional coverages in the basic package. These are losses incurred when an association is required by law to pay someone who was injured through the fault of the association.

Endorsements and **additional insurance** expand the coverage of the policy. Examples of endorsements and additional property insurance include:

1. An **inflation guard** that takes inflation into account and automatically increases the policy limits by a specified percentage
2. An **agreed amount endorsement** that eliminates the coinsurance provision
3. **Glass endorsements** that increase the number of situations under which the insurance policy will cover glass breakage
4. **Flood insurance**
5. **Mechanical breakdown**

As mentioned, an association is exposed to financial loss when it is legally obligated to compensate someone for their property damage, bodily injury, or personal injury. There are three basic policies that provide coverage for liability losses: the Commercial General Liability portion of the Commercial Package Policy, Workers Compensation and Employer's Liability Insurance, and Directors and Officers Liability Insurance. Depending on the activities of the association, others are also available.

One risk control technique for reducing the likelihood of injury is inspecting for, and eliminating, dangerous conditions on the property. For example, an inspection of the premises may reveal a broken irrigation head that could cause someone to trip and injure him or herself. Fixing the irrigation head reduces the likelihood of injury. Other examples include having a phone list of all emergency

An association also can reduce its potential risk of loss by:

- Doing a careful investigation before hiring any employees that have access to the units
- Training employees before putting them to work
- Properly maintaining and inspecting equipment
- Explaining the hazards of handling chemicals
- Providing clothes that are suitable for the job
- Setting up warning signs
- Placing warning labels on potentially dangerous devices
- Providing comfortable desks, chairs, and keyboard configurations

services easily accessible, having routine fire drills (in a high rise building), installing adequate lighting in the common elements.

Insurance

Commercial General Liability. Commercial general liability insurance is the second part of the commercial package policy. Commercial general liability insurance is usually divided into three sections. Coverage A includes coverage for bodily injury and property damage caused by the association. Coverage B includes protection for personal injury such as libel and slander. Coverage C provides coverage for medical payments.

Workers' Compensation and Employer's Liability Insurance. A second form of liability insurance is Worker's Compensation and Employer's Liability Insurance. The Worker's Compensation portion of the policy provides coverage for employees, if any, who are injured while engaged in association business. All 50 states require some form of workers' compensation insurance, but the statutes vary significantly. In Florida, workers' compensation is covered in Chapter 440 of the statutes. It is essential that the association be familiar with the law as failure to comply with the statutes can result in severe penalties.

The employer's liability coverage portion of the policy protects employers from suits brought by injured employees to recover damages separate from workers' compensation claims. This policy is designed to cover some of the exclusions in the commercial general liability insurance policy.

In purchasing this type of insurance, the association should consider the state's definition of the term *employee*. Although the term *employee* may be defined in statutes, they are often unclear. For example, in some states, volunteers are covered by workers' compensation law if the board of directors declares that they have employee status. Sometimes it is difficult to determine if a person is an **employee** (covered by the statute) or a **contractor** (not covered by the statute). The courts use the following factors to determine whether or not a person qualifies as an employee:

1. Does the worker use his or her own equipment?
2. Does the worker control the timetable for the project?
3. Does the worker control how operations will proceed?
4. Does the worker control the method of payment?

If the answer to these questions is no, the person is probably an employee. If the board is not sure whether a worker is an employee or a contractor, it should seek legal advice. The consequences of being wrong can be severe.

Directors and Officers Liability Insurance. The Directors and Officers Liability policy excludes coverage provided by other policies. For example, property damage and bodily and personal injury caused by negligent acts of the board is generally covered by the commercial general liability policy. Other types of losses that do not cause property damage, bodily, or personal injury include those resulting from the board's failure to collect assessments or to file tax returns. They are covered by the Directors and Officers policy.

Some exclusions that may be found in director's and officer's liability policies are:

1. Insurance decisions
2. Non-monetary damages
3. Unlawful acts of discrimination and violation of civil rights

The *insurance decisions* exclusion applies to actions resulting from the board's failure to purchase the correct type or amount of insurance. This exclusion can often be eliminated.

The *non-monetary damages* provision means the policy does not cover equitable actions. Equitable actions are those in which someone seeks an injunction to force the board to do something. Because injunctions are commonly sought, this exclusion can pose significant problems.

Misappropriation of Funds

An association also may suffer loss because an employee, volunteer, or manager misappropriates funds. Associations are exposed to this type of loss whenever someone is handling association funds. Thus, the board should identify everyone who has access to association funds and consider the trustworthiness of those individuals.

To help prevent this type of loss, the board should hire competent and trustworthy people, give them clear lines of authority, and supervise them. **Fidelity insurance** or **employee dishonesty insurance** provides coverage for misappropriation of funds. This coverage can be written either as part of the commercial package policy or as a separate policy. Sometimes, the governing documents require the board to purchase a fidelity bond. However, these documents often mean fidelity insurance, not a bond. If the association is in doubt, it should consult an attorney. Florida law requires the association to purchase this insurance. Florida law requires a **fidelity bond or insurance** that covers the maximum funds that will be in the custody of the association or its management agent at any one time (however fidelity insurance is also acceptable)—see section 718.111(11)(d) of the Florida statutes.

Insurance coverage for **net income loss** can come in several forms. **Loss of income** coverage can also include an unexpected expense caused by property damage, i.e. the association finds it necessary to rent office space due to a fire in the clubhouse, which houses the association's office. The association has some protection in the commercial package policy. If the condominium association derives more than 10 percent of its income from non-assessment sources, the board should consider purchasing income coverage.

In addition, the association may need to purchase endorsements or additional policies such as **business income insurance, rental income insurance, expediting expense, and accounts receivable insurance.** However, associations should be cautious with endorsements, which can also take away coverage. An example would be for those associations in the hurricane-prone coastal areas, an endorsement will be included that will specifically exclude wind coverage in the commercial policy. Therefore, the association must be certain to read the entire policy to include the glossary (definitions). A carrier may limit coverage simply through a narrow definition found only in the glossary. In addition, unit owners should be encouraged to purchase homeowner or renter insurance for their property, since internal areas of a unit are the occupant's responsibility.

Conclusion

The board members owe a duty of ordinary care to the owners. This duty includes an obligation to act as reasonably prudent people in reducing the association's exposure to risk of loss. Board members can reduce the association's exposure to risk of loss by controlling the likelihood and extent of loss and by purchasing insurance.

Additional Resources

Selecting the Landscape Maintenance Contractor, James B. Cranford, AMS, PCAM (GAP 12). Community Associations Institute, 1996.

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Selecting an On-Site Manager, 2nd Edition (GAP 19). Thomas Burgess, Community Associations Institute, 1996.

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Community Association Risk Management, 3rd Ed. (GAP 25), Treese. Community Associations Press, 1998.

Notes