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An Association Insurance **Survival** Kit

Insuring a common interest development ("CID") certainly involves several elements similar to a survival kit and its various necessary components. Just as you would pack a survival kit at home for you and your family, as a common interest community you must also prepare for a loss by obtaining the essential insurance coverage. Visualize, for a moment, what your home survival kit might look like. What is absolutely mandatory that you have packed to withstand a foreseeable disaster? Certainly, there are many things you may want to include but the bare essentials are truly the most important and more likely the first to be used. From this article, you will learn about the basic coverage necessary to insure a common interest community and, at the very least, you'll walk away knowing how to pack a survival kit.

Experts suggest that a survival kit should include one gallon of water per person per day. A typical home survival kit may last one week whereas an insurance policy typically offers a one-year term. A community needs to make certain adequate coverage exists at all times. Let's think of "water" as property coverage for your community. In order to make certain you always have an ample supply, verify that the replacement cost reported is, in fact, adequate; make certain the policy includes Building Ordinance Coverage as well as coverage for sewer drain backup.

Property Value/Replacement Cost

Insuring the property accurately can prevent the potential for hefty out-of-pocket expenses for unit owners at the time of a major property loss. Your association should be insured, at a minimum, for the value that your governing documents require, which is typically full replacement cost. Building values can be calculated through Marshall Swift Boeckh (www.marshallswift.com), an industry-wide program. Information used to calculate building values should be based on research and accurate square footage your broker has obtained.

Building Ordinance Coverage A, B and C

Building Ordinance Coverage A (Contingent Liability) provides coverage for undamaged portions of property. For example, if half of a building burns down, the property insurance coverage will replace the half of the building that is damaged. However, a majority of the cities and counties in California have ordinances that require the association to demolish the remaining 50 percent (or less) and rebuild as a whole. Since the unburned portion of the building is undamaged, the property insurance section does not provide coverage unless Building Ordinance Coverage A is included.

Coverage B (Demolition) provides coverage for demolition. This coverage is self-explanatory; however, because demolition can become costly if heavy machinery is needed, this coverage is an important component of full coverage.

Coverage C (Increased Cost of Construction) provides coverage for building code upgrades (local ordinances) and/or increased cost of construction. For example, assume that a building was to burn down and local ordinance requires that the reconstructed building include updated fire sprinklers and a hard-wired fire alarm system. Building Ordinance C will provide this coverage to the association.

Sewer Drain Back-Up coverage

This coverage is quite literally what it states. Below are examples of common instances where this policy would provide coverage for the association:

- Someone might flush an object(s) down a toilet that should not be flushed, causing back-up and property damage.
- Laundry soap can build up in common area lines causing back-up and possible property damage.

- Foreign objects from outside the association can end up in association lines and cause backup; however, invasion by tree roots is not a covered loss, as it is considered an uninsurable risk (act of nature).

An essential part of a survival kit is, of course, first aid supplies. After all, one should be prepared for bodily injury.

Commercial General Liability

This is typically a very broad policy and includes coverage for loss exposure such as bodily injury and third party property damage. The Davis-Stirling Act (Civil Code §1365.9) requires at least two million dollars in Commercial General Liability coverage if the common interest development consists of 100 or fewer separate interests and at least three million dollars if the common interest development consists of more than 100 separate interests.

Third Party Bodily Injury

A common example of third party bodily injury losses are slip and fall claims. Whether a person is supposed to be on the common area premises of the association or not, if he or she were to get injured, this coverage would protect the association.

Third Party Property Damage

Another area where you want your survival kit ready and capable is if your property causes damage to someone else's property. For example, a common area tree may fall onto a neighbor's car or house. You want to be prepared for these circumstances.

Other Necessary Coverage

- Coverage for Personal Injury (Libel, Slander)
- Unit Owners as additional insured
- Management as additional insured
- No exclusion for Assault and Battery
- No animal exclusion

As board members, you are charged with making day-to-day decisions in the best interest of the community. It is imperative that you are protected, and the Davis-Stirling Act (Civil Code §1365.7.) requirements call for at least $500,000 in Directors and Officers (D & O) coverage limits. Consider this type of policy as a way to protect or "feed" the association's leaders and decision makers. You will want to make certain the policy offers enough coverage for all and has an ample shelf life. An effective stand-alone D & O policy should include broad coverage, including Duty to Defend (which guarantees money for defense even if the loss itself isn't covered), coverage for non-monetary claims, full prior acts, committee members and spouses and, additionally, it should provide coverage of management.

What is D & O Liability?

D & O Liability is defense (expenses) and indemnity (awards and settlements) for wrongful acts and allegations against the board of directors as well as the association. This coverage is also known as Errors and Omissions Liability as this coverage provides for these types of losses as well.

Typical D & O liability claims range from monetary to non-monetary, breach of contract to violation of CC&Rs, discrimination to libel/slander. The majority of claims for common interest developments are non-monetary, such as a claim that the board failed to purchase adequate insurance. Interestingly, in the current economy, D & O liability claims have doubled over what they typically are in a more stable economy.

What Type of Coverage and Coverage Enhancements Should Be Automatically Included?

- Broad definition of insured and wrongful act;
- Duty to Defend
- Coverage for Monetary and Non-monetary Claims
- Coverage for Breach of Contract
- No exclusion for Discrimination (Fair Housing Act Claims)
- Personal Injury (Libel and Slander)
- No Insured versus Insured exclusion
- Management as additional insured

Commercial Umbrella Liability

These policies ("CUP") are an inexpensive way to extend liability protection beyond the limits of underlying policies, the same way a poncho might protect you from the rain. The reason a CID would want to purchase a CUP is to both satisfy the Davis-Stirling Act General Liability insurance requirements and/or simply enhance the association's limits of liability coverage. A broad Umbrella policy will offer coverage in excess of both the General Liability and Directors and Officers insurance coverage, as well as other liability insurance policies such as Employer's Liability (Workers Compensation).

Is There Anything Else to Look for in a Commercial Umbrella Liability Insurance Policy?

Yes, there are two types of insurance coverage within a CUP: **Coverage A (Excess Liability)** and **Coverage B (Umbrella Liability)**. Excess Liability is actually the portion of the CUP that extends over the underlying liability insurance policies whereas Umbrella Liability provides first dollar coverage (sometimes minus a self-insured retention) when an underlying insurance policy excludes the loss and the CUP does not have a similar exclusion. The association should look to purchase a CUP that includes both Coverage A and Coverage B.

One thing to look for when purchasing a Commercial Umbrella Liability policy is that the CUP's effective dates run congruently with the underlying insurance policies. This reduces the potential for a gap in coverage.

Fidelity Bond

Disaster assistance programs suggest that every household store an appropriate amount of cash in its survival kit in case, for some reason, bank funds aren't readily accessible. Similarly, Fidelity Bonds provide coverage in a dollar amount for employee dishonesty. In the CID industry, the board of directors and committee members are sometimes considered non-compensated employees. A Fidelity Bond is an insurance policy that covers the association should a director or the management company steal association funds. Although with current technology it is difficult to do so, there are still such thefts reported every month. For a nominal fee the community can adequately protect itself in the event of such a loss. Please refer to your governing documents to determine the amount of Fidelity Bond coverage that needs to be purchased. And be sure that your management company is included in the coverage.

Other types of insurance coverage available to CIDs include Workers Compensation, Flood, and Difference in Conditions including Earthquake. Employment Benefits and Employment Practices Liability are available for homeowner associations with employees.

In the event of emergency, we typically rely on media outlets for valuable information and updates. You should expect that same dependability from your Insurance Broker. After all, besides you and your property manager, your insurance broker probably knows or should know the most about your community and what needs to be protected. Ask your insurance broker to provide an annual review of coverage and to

present any recommendations they have to improve or enhance it. Invite them to share their findings at a board meeting at least one month before renewal.

You should also invite your broker to attend board meetings here or there during the policy term. This provides you a chance to ask questions about insurance but also gives you face time with the person you pay to protect your community year after year. Depend on your broker for market updates, policy form and language interpretation, and assistance with claims or potential claims the same way you would utilize an AM radio for updates during a disaster. Your insurance broker is the middle person between the association and the insurance carrier. Ask for her/his opinions. This is, after all, their specialty. You should not only feel protected by your insurance coverage but also comfortable with the hands in which you've placed your coverage. EJ

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