**The Good, the Bad and the Ugly of Community Association Directors’ & Officers’ Liability Insurance**

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**I. Introduction**

The Community Association whether called a Property Owners Association (POA), a Homeowners Association (HOA), a Condominium Association (COA) or other common interest developments are each a legal entity. By being a separate legal entity, the POA can defend itself in court and enter into contracts.

A separate legal entity must be managed by a natural person(s) such as a volunteer board of directors. The board of directors is the risk manager of the community association. Those who are familiar with the board’s duties and obligations understand that the key element of the duty is to put the association’s interest “above” the individual board members, or any other unit owner’s or owners’ interest(s). The primary charge of Board of Directors is to *Protect, Preserve and Enhance* the Tangible and Intangible Assets of the POA.

This paper will address the Who, What, Why, and How about the community association directors and officers policy. Who is Insured, What is Insured, Why is the insurance necessary. How is the insurance procured and often more importantly how not to procure insurance.

The policy form will also be reviewed and analyzed.

**II. The POA Board’s Duty**

The following is a *Quality of Management Worksheet* for POA boards to review as a guide to assist the board to understand the nature and breadth of their duty in managing the association. Although not all of these items apply to all associations, but the board’s failure to understand these items is the origin of most director and officer claims.

1. Has each board member read the association by-laws?

2. Has each board member read the covenant, conditions & restrictions?

3. Has each board member read all the association rules and regulations?

4. Individual board members cannot handle issues outside board meetings w/o Express BOD authority?

5. Have all board members complied with Board Member Certification, if required by State?

6. Does the board out-source collections to a collection firm or law firm?

7. Does the association have an annual audit of its financials?

8. Does the board consult legal counsel before terminating employees, if any?

9. Does the board seek legal counsel before entering into a contract greater than $5,000?

10. Does the board seek legal counsel before terminating a contract greater than $5,000?

11. Does the board only hire managers with licenses required by the state, if any and Manager Designations?

12. Does the board require that any managers hired have professional liability insurance?

13. Are all meetings open to all owners, except if involving litigation and personnel issues?

14. Does the board maintain meeting minutes approved as to form and content?

15. Does the board use Roberts Rules of Order or other parliamentarian rules for meetings?

16. Does the board maintain copies of all contracts?

17. Does the board maintain copies of all insurance policies?

18. Does the board meet directly with its insurance professional at least annually to review coverage?

19. Does the board have a reserve study and is it funded as recommended by the reserve study?

20. Does the board have a plan to inspect structural elements of all buildings that are common elements?

21. Is the association a member of the Community Association Institute (“CAI”)?

22. Do any board members attend CAI classes or other relevant educational presentations?

23. Does the board have a written procedure for unit owners to share concerns?

24. Does the board issue decisions in the name of the entire board and not individual board members?

25. Does the association use an independent accountant to handle the association financials?

26. Does the board direct that all association bank accounts or brokerage accounts to be reconciled monthly.

27. Does the board address insurance and risk management at the annual association meeting?

28. Does the board have a bidding process for contracts over a certain price threshold?

29. Does the board/association have a disaster plan?

30. Does the board require an annual as soon as reasonably possible after the annual meeting?

32. Does the board require certificates of insurance directly from each vendor’s insurance agent?

33. Board members disclose all facts & circumstance a reasonable person could believe will mature into a claim?

34. Does the board have an infrastructure plan?

35. Does the board have a FAQ regarding association life that it provides to prospective buyers?

36. Does the board have a procedure for welcoming new residents and or a new resident orientation?

37. Does the board have a succession plan or a plan to groom new community leaders?

38. Does the board review contracts each year and meet with vendors to maximize performance?

39. Does the board have a written Conflict of Interest Policy and require annual Board Member disclosures?

40. Do board members sign a Community Association Board of Director's Code of Ethics Agreement?

**III. The POA Risk Management Team**

Most volunteer board members of not for profit POAs do not have experience as board members when they are elected or appointed. One mistake new board members, and even old board members make is to “assume” that the management of an association is cased in common sense. Yes, there is some common sense, but there are many aspects that are based on governing documents, statutes, rules and often overlooked prior decisions and conduct of the board. The volunteer board members also fail to understand that an association is a business. As a result, the volunteer board members make their duty and obligation much more complicated than it need be.

The following is the board’s risk management team, a key member of which is the community association attorney.



It is critical that a board understand that although they have important duties that may impact many others in the association, they are not required to be experts or go at their duties alone. **TIP: The Board’s obligation is to Discuss, Decide and Delegate. Boards often forget they are not “employees.” Don’t turn the volunteer board role into something it is not.** Quite to the contrary, the board is required to use and rely on experts and professionals. Even if some of the board members themselves are professionals or experts, the board must be very careful relying on other board members’ opinions. This is not because these board members are not qualified or expert, but rather, if by chance they are relied on, and if they make a mistake, the D&O policy does not provide coverage for them as professionals.

**IV. Directors and Officers Liability Insurance (a.k.a. Management Liability Insurance)**

 **A. Directors and Officers Liability Insurance as a Funding Mechanism**

Why is director and officer liability insurance (“D&O”) necessary? Every set of by-laws and/or declarations of covenants, conditions and restrictions include a provision that the volunteer board members will be indemnified if their decisions or conduct in their capacity as a board member is challenged. The exception to this in most governing documents are if the board member’s conduct or decision is grossly negligent or willful. If your documents do not have such a provision, immediately see a community association attorney or call 911. Without this indemnification provision, why would any unit owner knowing this volunteer as a board member.

Community Associations are budget driven not for profit entities. Since “indemnification” of board members is not a budgeted item, it requires a funding mechanism. This mechanism is D&O. **CAVEAT**: **the consequences of board decisions and conduct are not always *insured* or *insurable*.** (D&O is also a primary funding mechanism for the indemnity provision in the management agreement between the community association and manager.) **TIP**: **if something is not covered by a D&O policy, or is not insurable, it will be covered by the association’s assets, a special assessment and/or a loan if obtainable.**

 **B. What Risk Must the POA Board Manage?**

 **1. Wear and Tear**

The board has two primary types of risk to manage. The first are “wear & tear” risks.” For all intents and purposes, these are the items set forth in the reserve study. These risk items are those items with a limited life *we know will wear out* such as a roof, building paint and parking surfaces. These are not insurable risks under an insurance policy. **TIP**: **a properly funded reserves study is insurance for the uninsurable risk.** It ceases to amaze me, but does not surprise me that boards do not fund reserves as recommended by reserve specialists.[[1]](#footnote-1) Unlike the insurance policy, the reserve study is not going to be non-renewed. However, it can give rise to a claim if it is not properly funded as a breach of fiduciary duty. Very often, the decision not to fund as recommended is to save unit owners money which is in direct contravention of the board’s fiduciary obligation. Pay a little now or pay a lot later![[2]](#footnote-2)

 **2. Unexpected Perils**

The second type of risk is “unexpected perils.” The unexpected perils, perils that are not guaranteed to occur, are what are insured. **CAVEAT:** However, just because the unexpected peril is the result of a board decision or conduct does not automatically mean it is covered under a D&O policy. This is one of the most difficult items for insureds, CAMs, attorneys and other professionals to understand.[[3]](#footnote-3) First, not every peril is covered under a D&O policy as it may be covered under a separate policysuch as the general liability policy. The most common perils that are not covered under the D&O policy are “bodily injury” and “property damage.” These are covered in the normal course under a general liability policy. In addition, costs to comply with fair housing or EEOC orders, the cost to redo an elections or the cost to undo and/or correct an architectural variance decision would not be covered.

Other perils that are not covered under some D&O policies are perils that are excluded, because (1) the insurer chose not to include those perils, (2) those perils increase the cost of insurance and the board chose not to pay for the broader coverage, and (3) something may not be insurable such as items addressed by the reserve study. Often, boards are not aware of they are procuring narrower coverage, because they do not demand that their insurance professional explain coverage directly to the board itself. The coverage that often falls into this latter category include defense of alleged breach of third party contracts, defense of failure to obtain or maintain insurance, discrimination (including emotional distress damages from discrimination), employment practices liability, or those policies that still do not provide coverage for non-monetary claims.

 **C. The Most Common Origin of Community Association D&O Claims**

During my tenure in the community association industry, I have touched in one way or another over 6,000 director and officer ("D&O") Liability claims. I have spent a significant amount of time over the past several years analyzing what is the common denominator between and amongst these claims. Although this analysis will always be a work in process, I have come to a few common denominators that I believe can be useful in community association governance and management that in turn will minimize D&O claims and hopefully keep premiums at a reasonable level. I acknowledge that other community association professionals may come up with other conclusions based on their experience.

 **1. Prospective Unit Buyer's do not do their Due Diligence before Buying into a Community Association**

A number of years ago, my daughter and son-in-law considered buying a community association. The presumption was that I would not approve based on years of dinner table discussions. However, I in fact indicated that is a great option for many and may be for them as well. However, ***they must do their due diligence first!*** Although I see the challenges in community association life every day, I believe that 90% to 95% or more community associations in fact operate fine with minimal issues. However, the other 5% to 10% could have avoided many issues and frustrations had they done their due diligence.

Due Diligence is critical for a prospective Unit Buyer to understand what it means to buy into a community association, and the cost benefit analysis of what they are giving up versus what they are gaining in this unique type of community. **Caveat:** Do not rely solely on your realtor or what the seller provides. I am not saying that realtors or sellers are not trustworthy, but this is not their expertise.

Once you buy in an association, *your home is still your castle. However, your castle is subject to the covenants, conditions and restriction you agreed to by signing documents at the closing. Buyer beware.* I cease to be surprised with how many Unit Buyers do not have time to do their Due Diligence, but they always have time to fight and litigate matters for years. Litigation is a no-win situation, except for those who find litigation a sport, and litigators. In the vast majority of times, litigation is a waste of time and money and often creates stress shortening your life and creating unnecessary acrimony. In many states, including Texas, the sellers[[4]](#footnote-4) and the associations[[5]](#footnote-5) have disclosure obligations. These obligations should help the buyer in conducting its Due Diligence. The problem is that these are normally forthcoming at the 11th hour not allowing the buyer to conduct its Due Diligence in a timely fashion. No one likes to get to the two yard line and have to take a time out to conduct more investigation. I have prepared a Unit Buyer Checklist to assist prospective Buyers to help make this process more user friendly. A copy of the Unit Buyers Check Lis Is an Exhibit to this paper.

 **2. The Same Prospective Unit Buyers who do not do their Due Diligence before Buying Often become the Board Members Governing the Association**

The second common denominator underlying D&O claims is the fact that many volunteer board members are very often the same Unit Buyers who did not do their due diligence. Accordingly, their motivation for joining the board is not to carry forward the existing governing framework, but rather to fight what they blindly agreed to at time of closing, but now see as unfair. **Caveat:** Life is not Fair.

*Accordingly, these newly motivated board members are there to protect their self-interest as opposed to the best interest of the community association. Putting the association’s interests above individual interests is a foundation to the board member's Duty of Good Faith and Loyalty obligation*.

This reality is a recipe for D&O Claims. Ignorance of the governing documents and the other items discoverable during the Due Diligence process do not excuse this conduct from maturing into a D&O Claim. Caveat: Ignorance of what you have agreed to is not a defense

 **3. Board Members Governing the Association and do not understand their Role**

The volunteer board members often do not understand their role as a board member. Some new board members are overwhelmed and feel intimidated deferring to other veterans. Others, believe that the board obligation is based in common sense, or similar to what they do in their personal business or parental experience.

This issue is an article in and of itself. At a minimum, there should be a requirement that a prospective board member should declare that he or she has read the governing documents and have asked any questions they may need to clarify their duties and obligations. Additionally, boards should have a mandatory annual board training. Even seasoned board members will benefit from these trainings to learn how to work together and to get updates on what is new in the industry and the law. Many management companies do this in the normal course and some make it available. On the other hand, many do not. This can be done by their management company, local attorneys, other community association professionals or one of the many CAI offerings you can get on line or by attending a course that CAI makes available through the 64 chapters worldwide.

It is my humble opinion that if 75% of Unit Buyers were to do their Due Diligence, the potential problems and challenges we see daily would be significantly reduced. This Due Diligence could be accomplished by using the Condominium Unit Buyer’s Check List discussed above.This could be especially useful so the buyer can be proactive long before the 11th hour. Some unit owners could also accomplish many of the items on the due diligence list by ordering a resale package used in your state sooner rather than later.

I also believe that the best defense is a good offense. There is no reason to hold off disclosure. The buyer will find out. I therefore recommend that boards and managers automatically provide this information on a proactive basis. Being proactive should have a positive impact on associations risk management. Accordingly, the *Condominium Unit Buyer's Check List* is just as valuable to the association and its board as it is to the Unit Owners. On the one hand, the check list could weed out prospective Unit Buyers who do not find a sufficient number of positives to outweigh the negatives. **TIP:** “Board Training and Education is worth its weight in Gold!

**V. The Directors and Officers Liability Policy[[6]](#footnote-6)**

It must be kept in mind that the Insurance Professional, the Manager and the Attorneys must help manage expectations for coverage under the D&O policy. As previously indicated, we would enhance the policy if the Insureds would be willing to pay the corresponding premium.

It is important to understand that the D&O policy is a critical part of the POA insurance puzzle, but is often a small piece of the premium puzzle. **PSA**: One of the major traps for the unwary POA board is making price the key consideration in the procurement of a D&O policy. For example, one D&O policy may be $1,000 and another $2,000. If you have 50 units, the $1,000 difference would be $20 per unit per year or $1.67 per unit per month. One uncovered claim will deplete the difference immediately. Keep in mind that an uncovered claim must be covered by the association’s assets, a special assessment and/or a loan.

Virtually every **liability p0licy** is built the same way, including the D&O Liability Policy

 **Anatomy of a D&O Policy**

* Insuring Agreement(s) (give the world)
* Definitions (define the world)
* Exclusions (limit access to the world)
* Conditions (requirements to access the world)
* Endorsements (change the world)

 Issued with policy, including State Amendatory endorsements

 Mid-term

**A. What you need to know before reviewing the D&O Policy**

1.Avoid reviewing the standard community association D&O policy through the lens of a typical private company or a publically traded company D&O policy. The D&O policies that dominate the community association industry are for all intents and purposes a Management Liability Wrongful Acts Policy. This causes confusion for many board members, attorneys and other professionals.

 2. There are no short cuts in reviewing the policy. Accordingly, approach the policy as an insurance coverage attorney would. Review the declarations page(s) to determine items that are specific to the subject risk such as policy term, policy limits, deductibles, retroactive date if any and the Prior and Pending Litigation date exclusion.

 3. The most important item to review on the declarations page is the “list of forms and endorsements” that make up the policy. Sometimes there is a separate form that lists all the policy forms and endorsements. Many questions I get are a result of someone failing to do this review or failing to confirm they have all pieces of the policy. More importantly, giving a board advice without this review could be devastating. Most of the community association D&O Program policies are built on a carrier’s standard policy and are amended to one degree or another by an amendatory endorsement. Also, many of the program carriers also sell the policies directly to brokers without program enhancements. In addition, these carriers also imbed D&O into their package policies and sometimes as an endorsement to the general liability section of a D&O policy.

 B. **Insuring Agreement(s)**

The Insuring Agreement is the heart of the policy which at first glance appears to give you the world. Very often two insurance agreements may appear the same and people stop at that point and then look at the price to make their decision. The following is a sample of an insuring agreement.

The **Company** shall pay on behalf of an **Insured** all **Loss** which such **Insured** becomes legally obligated to pay on account of any **Claim** first made against such **Insured** during the **Policy Period** or, if exercised, during the Extended Reporting Period, for:

(a) a **Wrongful Act;**

(b) **Employment Practices; or**

(c) **Personal Injury or Publishers Liability;**

committed, attempted, or allegedly committed or attempted, by such **Insured** before or during the **Policy Period.**

You cannot begin to analyze a specific policy until you have reviewed each bolded word. Bolded, italicized and words in quotation marks mean that it is defined. For example, some policies may define **Insured** as “past, present or future directors and officers.” Another policy may define the term as “an **Individual Insured** and the **Insured Organization**”, both bolded terms which requires reviewing those definitions. The Individual Insured may include past, present or future directors and officers, employees, volunteers including committee members and the community association manager and Management Company. This one bolded term defined in these two manners makes the first definition a deal breaker and very possibility a breach of the board’s duty.

Liability policies, including the D&O policy provide two separate benefits, Defense and Indemnity. The Indemnity obligation is almost always set forth in the Insuring Agreement as above. On the other hand, the duty to defend, which is probably the most important benefit may appear in the insuring agreement, in definitions, or many times in its own section amongst the policy conditions, often along with the settlement provisions. A typical defense provision provides:

The Company shall have the right and duty to defend any Claim covered by this

Coverage Section seeking pecuniary or non-pecuniary relief. Coverage shall apply even if any of the allegations are groundless, false or fraudulent.

Again, it is imperative to understand that the Defense and Indemnity policy benefits are separate. A common difference between the two is that the defense obligation is triggered if the allegations of a written demand, civil complaint or administrative petition or charge sets forth potential coverage whether the allegations are frivolous, false or fraudulent. When the trigger goes off, the carrier must provide a defense to the entire matter.[[7]](#footnote-7)

 **C. Definitions**

The definitions define the world that the Insuring Agreements provided.

It is imperative to review every definition of each bolded term in a policy, including the bolded terms within a definition. Another trap for the unwary is that many times a term may be redefined by an endorsement, either a specific endorsement or within another endorsement.

Although all definition are critical, those that can be more critical than others are the definition of Claim, Loss (does it include defense costs, or are defense costs defined elsewhere), Insured, Property Manager, Wrongful Act and Property Damage.

 **D. Exclusions**

Exclusions take away or limit the world that the Insuring Agreement gives.

One of the most confusing items for many is the reality that just because the Insuring Agreement is triggered, an exclusion can not only remove an indemnity obligation, but can also eliminate a defense obligation. Exclusions come in a number of varieties.

 **1. Absolute Exclusion**

An absolute exclusion in the normal course will eliminate any defense or indemnity obligation for a Claim at all. The absolute exclusion in the normal course has a preamble as follows:

The Company shall not be liable for Loss on account of any Claim directly or indirectly based upon, arising from, or in consequence of: …

The following list of the most frequently denied claims is primarily absolute exclusions. The addition of a potentially covered claim will not create coverage where there is an absolute exclusion in play.

**The Most Frequently Denied Claims**

* Bodily Injury (including emotional distress)
* Property Damage and Loss of Use
* Construction Defect
* Failure to Timely Report a Claim (This is a Basic concept in Community Association policy Boards, CAMS and Volunteer Leaders MUST understand. The consequences are draconian.)
* Claims for indemnification of Attorney fees and Costs
* Claim for indemnification for remedial measures such as compliance with an ADA Reasonable Accommodation requirement.
* Claim by an Independent CAM v. Association or CAM suing CAM Co. under D&O Policy

 **2. Defense only exclusions**

In the normal course, defense only obligations manifest as defense carve backs in an exclusion for indemnity. For example, a policy may deny any indemnity obligation for a breach of contract claim, but agree to defend the action. However, if there is a judgment for breach of contract damages, there is no coverage. This is also the same for “non-monetary claims” where there is only a defense obligation, and any orders for remediation are excluded (i.e. They will defend an ADA action, but will not pay for the wheel chair ramp accommodation).

 **3. A “for” exclusion**

The “for” exclusion is where the definition of “Loss” has a significant impact. The preamble normally provides: “The **Company** shall not be liable for **Loss** on account of any **Claim.”** Accordingly, if the definition of “Loss” does not include “Defense Costs”, the carrier may be required to provide a defense even though there is no indemnity obligation.

 **4. Perennial Favorite Directors and Officers Claims**

* Challenge to the method of, or failure to enforce Governing Documents.
* Discriminatory application of rules to unit owners.
* Challenge to Elections [i.e. alleged improper notice, improper counting and qualification of candidates]
* Challenge to alleged wrongful removal of a board member.
* Challenge to rejection of architectural application for a unit owner, or Challenge by other unit owners to what was approved by the board or ARC.
* Discrimination and Harassment by board member, Association employee or management Co.’s employee
* Counter Claim by a Unit Owner to a collection claim or action against the Unit Owner.
* Defamation Claim against the board or the CAM.

 **5. Trending Directors and Officers Claims**

* Discrimination Claims - both direct and disparate impact Claims. These have been on the top of the list and continue to develop a significant frequency.
* Emotional Support Animals – squirrels, chickens, peacock, snakes, dogs, cats (State and Federal)
* Service Animals (ADA as well as State actions where they have stricter ADA statutes.
* AirBNB and other Short Term Rental Claims
* Cyber Liability – Ransomware & Cyber Crime – Social Engineering
* Data Breach
* Challenge to Biometric scanning devices for entry to associations.
* Smoking – Cigarettes and Marijuana

 **E. Conditions**

Virtually all D&O policies are **Claims Made and Reported policies**. The conditions section of a Claims Made and Reported Policy are probably more significant than the notice conditions in other types of policies. Specifically, if the Claim is not made (given to the Insured) during the policy period, and it is not reported to the carrier before the policy period expiration, or the automatic reporting period or the optional discovery period, there will be no coverage. A big mistake that many make is that if they have the same insurer year after year, the claim being made during the policy period does not matter. That is not the case. With respect to any one Claim, the determination of compliance must be a review of the policy period in which the Claim was made.

Many people do not understand or mistakenly interchange the terms “Wrongful Act”, “Claim Made” and “Notice/Reporting.”

**“Wrongful Act”** = the act of the insured that someone is complaining about (a decision, an election, breach of fiduciary obligation)

**“Claim”** = a demand that the insured do or not do something regarding a wrongful act (change a decision, do not take action)

**“Notice/Report”** = when the insured advises the insurer that the insured has received a claim.

Most boards, CAMs and other community association professional are familiar with “Occurrence” policies such as a general liability or an auto liability policy where the trigger of coverage is when an accident happens. For example, a car accident, the slip and fall causing bodily injury, or a tree in your yard falling on the neighbor’s house resulting in property damage. For Occurrence policies, reporting the claim or suit to the carrier is a condition but it is not as catastrophic on the POA. Specifically, the insurer has the burden to establish the late notice has prejudiced the insurer’s ability to investigate, litigate and resolve the claim on behalf of the Insured(s).[[8]](#footnote-8)

 **F. Endorsements**

Endorsements as indicated above can have a significant impact on coverage by changing any of the items above. Do not take Endorsements lightly. An endorsement can be on a policy at inception as state amendatory endorsements[[9]](#footnote-9) or Program endorsements.

An endorsement can also be done as a midterm endorsement changing a policy coverage such as the limit of liability or the deductible amount. Many midterm endorsements are premium bearing endorsements.

**VI. CONCLUSION**

The D&O policy is a critical piece of the community association insurance puzzle. It may not be the most expensive, but it could very well be the most critical piece.

The following are some take-a-ways:

* The focus of D&O procurement must be the best coverage to protect the interest of the Association.
* Do not make price a priority in the procurement. Price should not be considered until insurance coverage has been presented and determined to be the appropriate coverage.
* There is no reason that an insurance proposal is not made directly to the board by the community association insurance professional.
* See a community association insurance professional to provide the appropriate insurance coverage and make sure he or she makes sure the policy is in the best of the association and not just the coverage the insurance professional has access to.
* It is imperative to understand what constitutes a “Claim” and the reporting requirements. The failure to do so could be draconian.
* Just because a board’s conduct or a board’s decision or non decision results in Loss does not mean it will be covered under a D&O policy.
* When reviewing the policy, make sure all the pieces of the policy as set forth on the declarations page or schedule of coverage and endorsements.
* Understand the different types of exclusions, the “absolute” exclusions, exclusions with the “for” language, and “defense only carve-back” exclusions.



1. The failure to properly fund reserves as recommended, or to fund at all has been a significant concern for community association industry professionals for years. It is recommended that you review and provide the Foundation for Community Association Research Publication: *Breaking Point: Examining Aging Infrastructures in Community Association*s. <https://foundation.caionline.org/wp-content/uploads/2020/04/FoundationAgingInfrastructureReport.pdf> [↑](#footnote-ref-1)
2. In light of the Champlain Tower East Condominium Association collapse on June 24, 2021. The collapse of this 12 story beachfront condominium in Surfside, Florida is directly focusing on the responsibility of Boards with respect to Reserve Studies and the corresponding statutes and their duties owed to the association. Boards and their CAMs, Attorneys, Insurance Professionals and unit owners must understand, there is no coverage for the Boards decisions and conduct leading up to the collapse. Payments under policies were made solely as a business decision. [↑](#footnote-ref-2)
3. I share with Boards, CAMs, Attorneys and other professionals, including insurance professionals that we could cover every consequential damage resulting from a board decision or conduct if they can get the association to pay for the cost of that insurance. We are putting $1 million in limits of liability and defense outside the limits for anywhere between $700 and $1,500 on the average. The program would be killed within the first year if not the first month. [↑](#footnote-ref-3)
4. Property Code, Title 2. Conveyances, Subchapter A. General Provisions, Sec. 5.008. SELLER'S DISCLOSURE OF PROPERTY CONDITION. (a) A seller of residential real property comprising not more than one dwelling unit located in this state shall give to the purchaser of the property a written notice as prescribed by this section or a written notice substantially similar to the notice prescribed by this section which contains, at a minimum, all of the items in the notice prescribed by this section. [↑](#footnote-ref-4)
5. CHAPTER 207. DISCLOSURE OF INFORMATION BY PROPERTY OWNERS’ ASSOCIATIONS [↑](#footnote-ref-5)
6. This paper focuses on the Directors and Officers Liability Policy that is only one piece of the of the Community Association Insurance Puzzle. For a more complete discussion of the Community Association Insurance Puzzle, see: <https://mcgowanprograms.com/wp-content/uploads/sites/2/2020/08/Attorney-Audit-CA-Ins-Puzzle.pdf> [↑](#footnote-ref-6)
7. Have a mandatory annual board training for new and veteran board members so the members understand what their role is as a volunteer board member. **ADMONITION: although it is rare in the community association world, many policies in the greater D&O world are Reimbursement Policies. This is where the association must pay out of its pocket and seek reimbursement from the carrier**. [↑](#footnote-ref-7)
8. Texas courts have found the prejudice requirement need not apply to claims or suits seeking coverage under a policy’s “advertising injury” or “personal injury” liability coverage, as the insureds are typically commercial entities and therefore sophisticated insureds. But see PAJ, Inc. v. Hanover Ins. Co., 170 S.W.3d 58 (Tex. Ct. App. 2005) reversed by 243 S.W.3d 258 (Tex. Ct. App. 2008); New Era of Networks, Inc. v. Great Northern Ins. Co., Inc., No. Civ.A. H-01-1841, 2003 U.S. Dist. LEXIS 14247 (S.D. Tex. Aug. 5, 2003) [↑](#footnote-ref-8)
9. State Amendatory Endorsements include terms and conditions that the state requires be on the policy form in order to be sold in the state as an admitted policy. [↑](#footnote-ref-9)