

What HOAs Need to Know About D&O Insurance

Sometimes, homeowner-HOA disagreements result in lawsuits against the HOA. Not infrequently, such suits also name one or more HOA board members. Without adequate Directors and Officers (D&O) insurance, a lawsuit against an HOA board member can leave the member responsible for paying legal costs, expenses, and even damages. Since no prospective board member wants to risk going broke as a result of acting on the board, in order for an HOA to attract and keep good board members, adequate D&O insurance is a must.

Liability of an HOA Board Member

Numerous types of homeowner lawsuits are possible against the HOA — such as for an HOA's failure to maintain the common areas or adopt an annual budget, or for misusing HOA funds. An HOA board member is typically only personally liable in these lawsuits if the member breached his or her fiduciary duty to the HOA. (For more on board members' fiduciary duties, see Nolo's article [Fiduciary Duties of HOA Board Members](#)).

Lawsuits against individual board members that are not based on a breach of fiduciary duty are typically dismissed by the court early on. For more information on a board member's personal liability, see Nolo's articles [Liability of HOA Board Members for Personal Injuries on the Property](#) and [Liability of HOA Board Members for Association Debts](#).

However, regardless of the validity or ultimate success of any lawsuit, legal expenses and costs are inevitable when a legal action is filed (or even just threatened). If a lawsuit is successful, an HOA board member could owe a large judgment amount. Even if a legal claim is dismissed, settled, or negotiated prior to filing, an HOA or its board will likely incur costs and legal fees for an attorney's assessment, advice, and assistance with the claim.

Determine Whether Your HOA's Insurance Coverage Is Adequate

Almost all HOAs carry general liability insurance, which generally covers legal expenses for the association itself. D&O insurance, on the other hand, protects an HOA's board members, by covering any legal expenses resulting from the member's actions on the board.

To determine whether your HOA has adequate insurance, obtain a copy of its insurance policies (the HOA should have them on file, or the HOA's insurance agent can provide copies). If your HOA doesn't have a D&O policy in place, talk with the board members about purchasing one. An experienced insurance agent can assist in describing the benefits (and cost) of such a policy.

Whether your HOA currently has D&O insurance or is buying a new policy, you'll want to make sure that it provides board members adequate protection. Here are key questions to answer.

Who Does the D&O Policy Cover?

Typically D&O insurance policies cover all HOA board members. Some also cover HOA employees, committee members, and other HOA volunteers. However, D&O insurance can also expressly exclude certain people. Some policies might exclude non-owners for example, or exclude legal claims against members no longer serving on the board.

What Is Covered?

Most D&O policies pay the legal costs and fees related to defending HOA board members against any legal claim against them, and pay any judgment amount. However, D&O policies can differ regarding whether legal costs are covered in the event of a settlement. For example, sometimes a board member must hire an attorney just to assess a threatened suit, or a filed lawsuit is settled through negotiations prior to going to trial. Either way, legal expenses are involved. Check the D&O policy to see if these types of expenses are covered, or if the policy pays only in the event of a final ruling.

Also check to see if there are any types of claims the D&O coverage excludes. For example, some policies cover a board member's breach of fiduciary duty, but exclude negligent or fraudulent acts, or actions where a board member knowingly violates the development's governing documents or state law. A well-run HOA knows, and fully informs each board member of, the coverage limitations.

When Is Payment Made?

The timing of the D&O insurance payment can vary as well. Check the policy to determine when payment is made. Some policies pay expenses as incurred, while others only provide reimbursement after the case concludes (which means the HOA or the board member must come with all costs upfront).

What Are the D&O Policy Coverage Limits?

All D&O insurance policies have maximum (monetary) coverage limits. To determine an appropriate limit for your HOA, you must take into account the size and complexity of the development. For example, a high limit is necessary for a large development, such as a thousand or more people, containing many common amenities, such as entrance gates, pools, tennis courts and fitness rooms. A more modest limit will suffice, however, for a small, simple development (such as a fifty-person community with only a common clubhouse).

What Is the Cost of the D&O Policy?

Just as with other insurance policies, periodic premiums are required for D&O insurance. Premium amounts vary depending on the policy's comprehensiveness and payout limits. The premium for a D&O policy can range anywhere from under a thousand dollars per year, to many thousands per year.

When assessing whether your HOA's D&O policy is appropriate, you must weigh the premium costs against the costs of not having proper coverage in place. Although the premiums are sometimes hard to part with in lean economic times, keep in mind that, without appropriate D&O coverage, the HOA could easily spend many thousands of dollars on attorney's fees, court costs, and damages in just one lawsuit.

Consult With an Insurance Agent

A well-run HOA is one with a good D&O policy that sufficiently protects its board members. If you need help determining whether your HOA's D&O policy is adequate, or with purchasing an adequate policy if none is in place, consult with your HOA's insurance agent (or another experienced insurance agent in your area).

Learn More About D&O Insurance

You can find out more about D&O insurance through online resources, such as the detailed D&O insurance summary provided through HOA-USA.com.