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THE PRACTICAL GUIDE TO HOMEOWNER ASSOCIATION MANAGEMENT

Tips for Weighing Your Condo/HOA Insurance Options at Renewal

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An HOAleader.com reader has asked for tips on evaluating insurance offerings. We can help!

Here, our experts give their best advice for boards that are getting new documents at policy renewal time and those getting quotes when they seek insurance.

Make Sure You Have What's Required

Your first step any time you get or renew insurance is to make sure you meet the governing document and statutory requirements that cover your community, says Noelle Hicks, CCAL, a Houston-based shareholder at Roberts Markel Weinberg Butler Hailey PC, who represents condos and HOAs throughout Texas and has been named to the National Black Lawyers Top 100.

“I let my clients know the kinds of insurance they absolutely have to have based on their governing documents and the Texas property code,” she explains. “Generally I recommend, based on the property code, that they have general liability insurance and that they insure all the association-owned facilities and common areas. I also suggest they have directors and officers insurance to protect the board.

“I've also recommended fidelity and crime coverage,” says Hicks. “I recommend the crime coverage because sometimes associations have employees, and they also have vendors and contractors, and you just never know what could happen with an employee or vendor. They also might have some sort of crime that takes place on association-owned property or against association-owned property.

“I recommend that for some clients but not all,” she adds. “Some condos or HOAs might expect that coverage and can actually afford it. But insurance premiums are skyrocketing, and I'm seeing lots of problems with associations affording the basic coverages they need.”

After sharing that advice, Hicks then recommends clients go directly to their insurance broker for further advice.

You Know It: Insurance Costs a Ton and Covers Less

Your broker is a critical player today because the insurance crisis for condos and HOAs isn't easing. Our experts say their clients are still struggling to find affordable insurance—or insurance at all.

"When talking about what boards experience at insurance renewal, I hate to say that it depends," states Zuly Maribona, LCAM, the Bonita Springs, Fla.-based senior vice president and partner at **KW Property Management** who oversees the company's southwest Florida, Jacksonville, Orlando, Tampa, and North Carolina operations. "But it does depend on the association and what they may have going on.

"What liability do they have?" she explains. "What losses have they experienced? Did they have a major storm-related loss? Where are they, such as on the water? But in general, there's an overarching struggle to find the right coverage, and the cost of policies in general is higher, though there are some policies that have cost less.

"For some clients, I've found that their insurance broker has been able to say, 'We've got cost savings and efficiencies,'" says Maribona. "I don't know if they're consolidating coverage for associations or the association has done work like replacing the roof, which reduces the risk for the insurer. Another thing we've seen is that some policies have reduced certain coverages for condos or HOAs."

Julie McGhee Howard, co-founder and managing partner of NowackHoward LLC in Atlanta, who at any given time represents hundreds of condos and HOAs throughout Georgia, has seen similar changes. "There are situations where some insurance companies, because of the skyrocketing premiums, have carved out certain parts of the community for coverage," she explains. "They're essentially saying, 'The only way we'll cover you is if we don't cover this part of your community.' In one particular example, coverage for a roof was carved out."

When you review the coverage you're offered, ask your broker and your lawyer to explain it in detail, including what's there and what's missing. "There are better coverages than others, especially on the directors and officers policy side," says Howard. "If the condo or HOA is sued for things like breach of contract or a fair housing claim, not all policies cover the defense of a declaratory judgment action, so the condo or HOA is forced to pay to handle those matters.

"For instance, when a homeowner challenges an amendment to the governing documents, they'll typically file an action claiming the amendment isn't valid or that the association didn't get the necessary approvals," she explains. "They're asking a court to declare something invalid.

"Or it might be related to a board election, and the homeowner is suing to have the court declare that board members are the actual board members or that they're not the actual board members," says Howard. "Make sure you have one of the better policies that cover those kinds of claims."

Howard also suggests that you ask if it's possible to have different deductibles for different types of claims. "Every year, our situation with water claims gets worse," she says. "We increasingly give advice to clients to consider having two different deductibles, one for water claims and one for everything else.

"Especially in multi-dwelling stacked units, water leaks are the most common claims," reports Howard. "If you're having to file an insurance claim on every one, associations then can't get coverage the following year. It's about really evaluating those water claims and shifting the burden for the smaller claims to the owners so those claims don't really hit the master policy."

Push Your Broker to Work Hard on Your Behalf

The most important thing you can do when you get a policy for renewal is to work with an insurance broker who has experience with insurance specifically for community associations and knows where to push back.

"I think it's definitely fair to have the discussion with the insurance broker to ask if there are better coverages or policies out there," says Maribona. "It's really important to work with the right insurance advisor or broker. Insurance isn't like other contracts your association enters into where you can get multiple bids and work with several vendors. You're tied to one insurance broker.

"But you can definitely vet them and make sure you're working with the right one," she notes. "Know who you're working with because some brokers can get complacent and don't do as much as they know they can or should to get the best coverage and premiums for associations."

You May Need to Get Political

Some of our experts steeped in the community association industry are working with legislators to try to pass legislation that would make insurance easier and more affordable for condos and HOAs. For a long-term fix to this problem, you may need to join the efforts.

Cary Devorsetz, a partner at Alderman, Devorsetz & Hora PLLC in Washington, D.C., who for 20 years has been representing condos, HOAs, and co-ops in the district, is one of those experts working to change existing laws.

"I'm part of a subcommittee that's pushing to modify the master insurance statute in Washington, D.C., that requires associations to get certain coverages," he explains. "The current law also requires homeowners to have certain HO-6 insurance policy minimums and to pay for the association's deductible if damage emanates from their unit. That deductible is now set at $5,000.

"We're recommending to legislators that the $5,000 be increased," says Devorsetz.

"Associations could amend their bylaws to increase the deductible that owners must cover if damage emanates from their unit. But because it's so expensive, slow, uncertain, and time-consuming to amend the governing documents—and you'll never know if you'll get enough people to show up to vote—we're working to change the legislative default.

"The way the law is written now, it says that regardless of what an association's bylaws say, the statute controls, and the maximum owners have to pay to cover the association's deductible is $5,000," he notes. "We're trying to increase that to $25,000.

“I'm told by insurance experts that there's no such thing as a $5,000 deductible these days,” says Devorsetz. “And if there's a situation where an association has multiple per-unit deductibles, that would apply. too. We're also looking to increase the minimum HO-6 requirements that homeowners have to meet to update it from the 2014 dollars it's currently at.”

Howard is also working on legislative changes in her state. “We had proposed legislation that did pass out of committee but wasn't passed by the legislature,” she explains. “I testified on the bill, which we hope to see again next session.

“It would change what the association can assess back to a unit owner when a unit is part of the loss,” says Howard. “Where there's coverage and a claim and the association has a deductible, this would increase what the association can assess back to the homeowner. We currently have that at a cap of $5,000, which is unusually low. We're advocating to increase that amount.”

Legislators are typically loath to impose increased financial burdens on their constituents. But Devorsetz believes the rationale he and others are pressing makes financial sense overall.

“The way we've spun this to the D.C. city council is that this proposed legislation may seem from an optics perspective that you're making Joe Regular Property Owner pay so much,” he explains. But this situation is rare. If the damage emanates from their unit, their HO-6 policy will cover the association's deductible 9 of 10 times. And that owner's policy premium goes up only a little for that additional coverage.

“The converse is, if we don't make this change, the association will have more frequent claims, and they'll have to pay deductibles for every claim,” adds Devorsetz. “In those cases, everyone in the condo pays. Then, especially when an association gets dropped from their carrier because they have too many claims and have to go to secondary insurance markets to get adequate coverage, it's worse for every homeowner in the community.”