

Community Association Insurance Claim Process

I. The Claim Process begins ***before*** insurance is purchased!

- a. **Shop for a Community Association Insurance Professional not the Policy.**
- b. Purchase the best Coverage; avoid the seduction of the cheapest price.
- c. Beware of the Insurance professional selling price and not coverage.
- d. Require the Insurance Professional to explain their claim role.
- e. Insist that you receive complete copies of every policy and a schedule of Insurance.

II. When do you **tender** (submit) a matter to an Insurer(s) for defense and indemnity?

- a. **Tip:** If you are asking the question, you have answered the question.
- b. The “CAM” or the Insured(s) should submit it to the Association’s insurance professional. If you have no CAM, **designate a single board member** to be the contact with the Insurance Professional?
- c. The Insurance Professional should advise if a matter should be submitted to the insurer, and if so, which insurer(s).
- d. The insurance Professional or Attorney advice received **MUST** be confirmed in “writing!”

III. If the claim is a “*liability claim*” ***also*** contact the association’s attorney.

- a. Is there an insurance policy that should pay for the defense and or indemnity of the association, board, employee, volunteer or CAM (collectively “Insured(s)”)?
- b. Is there a third party that is responsible for the association’s defense and or indemnity notwithstanding the insurance (i.e. contractor, professional, or another entity agreeing to indemnify in a contract)?
- c. Make sure all the association’s insurance policies, contracts and governing documents, minutes and rules ***are in order*** to give expeditious access to your association counsel, or the insurer appointed attorney.
- d. **Caution:** as a general rule, no insurer is required to provide coverage, including defense fees, until it has given written consent to the Insured(s). Accordingly, do not assume corporate counsel will be reimbursed for any pre-tender fees.

IV. When a Claim is received, the Insured(s) **MUST** protect the association’s interest.

- a. Insured(s) should not discuss **ANYTHING** about the Claim between and amongst themselves, or anyone else (including a spouse) other than the timing of an attorney meeting! If you do, there will be no privilege to protect those communications. These discussions **MUST** only be discussed with counsel in preparation of litigation or defense of a Claim. Otherwise, these discussions are discoverable.
- b. There is **NO** “board member privilege.” There is **NO** “pillow talk” privilege.
- c. Board members **MUST NOT** communicate between and amongst one another by e-mail or any other form of electronic communication. This type of board communication should never occur, especially in light of litigation. These are all discoverable, and may constitute an unauthorized board meeting.
- d. Do not edit or massage the information you provide your attorney or insurer. It will do nothing other than sabotage the claim. The facts are the facts.

V. The Claim Representative ***is your friend***; your Insurance Professional is your Advocate.

- a. **Claim Reps want to pay your claim!** Treat them as a partner. Board members are fiduciaries tasked with protecting the association’s interest. Treating a claim rep as an adversary is not in the association’s interest. Psychologically, people (claims reps included) want to help Insured(s) who are nice and civil.
- b. Claim Reps are creatures of audit. They must document the claim file to support any payment. Accordingly, make their job easier and provide the documents and information they request.
- c. Every insurance policy has a “**Cooperation Clause.**” Failing to cooperate may impact the adjustment of a claim and the rights and coverage in the policy.

Admonition: *The Association is a Business. Leave Emotion and Principle at the Door!*