CAN ADOPTING A BOARD MEMBER "CODE OF ETHICS" BE AN EFFECTIVE RISK MANAGEMENT TOOL?

Keeping The Board Out of Hot Water?

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Let's say your community association board purchased the broadest Directors & Officers Liability coverage available. This is a good start, but even the best errors and omissions policy has significant limitations and exclusions. Comprehensive risk management requires more than purchasing the right coverage. In fact, to best protect the Board you'll have to utilize a number of diverse risk management techniques. One of the risk management tools in the Association's arsenal which can potentially keep a Board of Directors out of legal hot water or facing a burdensome D&O Claim may be a simple step -- adopting and adhering to a **Code of Ethics.**

A written document suggesting model behavior seems like an obvious approach, but adoption of a Code of Ethics remains frequently overlooked and often unappreciated - not only by Boards and their community managers, but even by many in the insurance and risk management field.

"The notion that 'ethical behavior' can help board members minimize liability has not really been explored as it should be," suggests Clifford Treese, CPCU, CIRMS, industry expert and co-author of Community Association Institute's GAP Reports on Insurance, Risk Management and Introduction to Community Association Management Governance and Services. "Most commentary on board behavior focuses on compliance with statutes and governing documents (both of which are certainly necessary) and on fiduciary obligations (again a necessary focus). When it comes to reducing board member liability certainly adopting a code of ethics can be a critical first step and many risk management experts in the country have weighed in on the use of a code of ethics as a viable risk management technique."

Joel Meskin, Esq., Vice President of Ian H. Graham Insurance, the firm responsible for administrating C.N.A's Community Association D&O program nationwide, agrees, "One of the key problems that boards have to deal with is the appearance of impropriety. Members who are not on the Board very often have a paranoia that things are being done behind their backs and for improper motive or gain. If I could recommend one key ethical standard, it would be to avoid the appearance of impropriety almost at any cost."

Mr. Meskin's admonition? He warns, "What this means is that all but only the most confidential issues before the board be held in open session," he asserts.

The adoption of the code of ethics may do more than reduce the potential for errors and omissions claims, it can also raise the professionalism of the Board Meskin contends, "One of the reasons that a Code of Ethics would be a fabulous idea is it would instill in the board that they are in fact a group of professionals running, for all intents and purposes, a business."

Meskin feels strongly that the Code of Ethics should include more than laying out guidelines to avoid conflicts of interest and a warranty that board members will keep their homeowners dues current. "A code of ethics should absolutely include a requirement that a board member not begin to work on a board unless and until they have read and reviewed the association By-Laws and CC&Rs."

Are documents often overlooked? "This is a very simple concept and very logical, but if you took a poll and the respondents were honest, many board members would tell you that they have not read these documents," Meskin says.

On the mechanics of proper conduct, Cliff Treese believes, "Board members should consider ethical behavior...as it brings other necessary added components to guide their conduct. 1) It emphasizes placing community interests above personal interests; 2) It is predicated on being guided by a sense of civility, dignity and honor when dealing with fellow residents; and 3). It focuses on integrity as a fundamental aspect of decision making and conduct."

Thomas B. McGowan, IV J.D., M.B.A. and Vice President of McGowan and Company, an Ohio-based managing general agency which underwrites United States Liability Insurance's Community Assurance D&O policy nationwide believes there are real financial benefits to paying attention to such details. McGowan states, "Risk management is a process by which associations reduce or minimize their exposure to loss. In theory, by reducing its exposure to loss, an association reduces the likelihood of claims, thereby reducing its premiums over a long-term period. We all know that 'lower claims equal reduced premiums'."