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KNOW WHICH CORONAVIRUS-RELATED RISKS ARE COVERED BY YOUR ASSOCIATION'S INSURANCE

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[GENERIC IMAGE]

Some community associations may mistakenly think their existing insurance protects them from liability related to the pandemic. It's important to study the policy to make sure you have the right coverage. (iStock)

As governors around the country ease stay-at-home restrictions, community association boards are forced to make difficult decisions regarding opening common areas, where once ordinary activities such as going to the gym or swimming pool or throwing a party are now fraught with risk. Managing social distancing during the pandemic is especially challenging for condominium and homeowners associations where residents live in close quarters and share common spaces.

It is important that an association's board of directors has a good understanding of its insurance policies in evaluating potential risks associated with the novel coronavirus. Insurance is not the panacea for all risks associated with the virus. Board members should carefully review the following insurance policies to determine what risks are covered.

Why it's important for your condo's HOA to have liability insurance — and plenty of it

Commercial general liability insurance

Reopening association recreational facilities creates the risk of potential lawsuits if any resident contracts the coronavirus. Every homeowners association should have a general liability policy that protects against risks related to bodily injury or property damage. However, many general liability policies have a communicable disease exclusion that may exclude coverage for bodily injury caused by a virus. Accordingly, many insurance carriers have taken the position that they do not have a duty to pay for an attorney to defend a lawsuit or a duty to pay a judgment for a coronavirus claim.

Homeowners associations need to prepare for the possibility that claims related to virus exposure will not be covered. Associations that reopen recreational facilities when legally allowed to do so by state and local governments must comply with applicable health and safety orders.

Associations also should consider amending their governing documents, enacting safety rules, posting warning signs around common areas and implementing additional safety protocols to reduce risks that may not be covered by insurance.

Directors and officers insurance

This policy guards against risks that arise when directors or officers are sued for making business decisions. For example, community association board members could be sued if they keep recreational facilities closed, or they could face potential claims related to canceling or delaying annual meetings. The cost of defending these types of non-monetary claims can be eliminated through proper insurance coverage. Associations that have a basic “package policy,” which is often bundled with general liability insurance as a cost-saving measure, may not have insurance for non-monetary claims, and it can create a gap in insurance coverage. A specialized stand-alone directors and officers insurance policy will typically pay for an attorney to defend non-monetary claims. It is imperative board members understand what types of risks are covered by their directors and officers insurance policy and make sure coverage exists for the defense of non-monetary claims.

Crime and cybersecurity insurance

Cybercrime is another unwanted consequence of the coronavirus. Google said it blocked 18 million daily coronavirus-related phishing emails in one week in April. Lookout, a cybersecurity company, reported a 37 percent increase in mobile phishing in the first quarter of 2020. Associations should be prepared to deal with these risks.

Board members may see an increase in emails from criminals pretending to be other board members, community managers or business partners requesting money. Unfortunately, phishing scams are typically not covered by many general liability or directors and officers insurance policies. While cybersecurity liability is relatively new in the association world, about half of the community associations that are aware of cybersecurity liability coverage purchased the specialized insurance, according to a 2018 report from the Foundation for Community Association Research. All community associations should obtain a crime or cybersecurity liability policy if they have not done so already.

Every community association should consult with its attorney and insurance agent to determine what risks are covered and avoid the temptation of simply choosing the cheapest coverage. This is especially true during a pandemic. While insurance does not cover everything, proper coverage can eliminate many risks.

About the author:

Kevin M. Hirzel is a fellow in Community Associations Institute’s College of Community Association Lawyers and the managing member of Hirzel Law, PLC, with offices in Farmington, Mich., and Traverse City, Mich. This column is not legal advice and should not be acted upon without obtaining legal counsel. Send questions to government@caionline.org.