



"Ask the Expert" is a regular column in Insurance Focus, featuring an interview with an expert about an important insurance issue facing community associations. This month our expert is attorney Thomas C. Schild of Thomas Schild Law Group, LLC in Rockville, Maryland. Mr. Schild has more than 20 years of experience in representing condominiums, cooperatives, and homeowners associations in Maryland and the District of Columbia.

**Q:** Do community association directors face potential legal liability for not obtaining adequate property damage insurance?

**A:** Among the most important responsibilities of a community association board of directors is to obtain adequate insurance to protect owners against financial loss arising from catastrophic property damage. For condominiums and cooperatives, this responsibility typically extends to the dwelling units as well as the common area of the buildings. For homeowner associations, the responsibility only applies to the common property (which might include buildings such as a clubhouse or recreation facility, but does not include individual dwelling units).

In fulfilling its responsibility to obtain adequate property damage insurance, the board must first understand the insurance requirements of state statutes and the association declaration and bylaws. State condominium law typically requires a board to obtain insurance against risks of direct physical loss commonly insured against "to the extent reasonably available." Such laws sometimes establish a minimum amount of coverage or a maximum deductible amount.

In addition, the association governing documents for condos, co-ops, and homeowner associations will often specify the terms of required insurance on matters such as minimum coverage amount, ratings of insurance company, special endorsements, and maximum deductible amounts. The amount and terms of insurance a community

association must obtain are also influenced by the loan underwriting standards of Fannie Mae.

A board of directors that acts diligently in good faith and in a reasonable manner to obtain the required insurance coverage to protect against catastrophic loss will generally be protected against liability if the amount of insurance is not adequate to fully cover costs of repair or replacement. Community association boards may be shielded from liability for good-faith decisions by statute or the court-created "business judgment rule." Protection for the board and individual board members is afforded under these legal principles where the board acts in good faith, reasonably, and without fraud, dishonesty, or incompetence. The association governing documents may also limit director liability in such circumstances.

Claims that a board has not obtained adequate insurance to cover property losses are generally not covered by directors and officers liability insurance policies. Therefore, to avoid potential liability for not obtaining adequate insurance, a board should carefully document its efforts to obtain insurance. Increase in cost is not sufficient reason to fail to purchase insurance that is "reasonably available."

Board actions that demonstrate exercise of good business judgment include obtaining a professional appraisal of the property, consulting insurance professionals, focusing on protection against catastrophic loss, and informing owners and lenders of coverage and deductible amounts.