



NEWS OF VALUE

COMMON LAWSUITS AGAINST COMMUNITY ASSOCIATIONS

Community associations provide a communal basis for preserving, maintaining, and enhancing homes and property. Associations make promises to members and expect a certain standard of conduct and living from them. When things go wrong within this relationship, there is always the possibility of a lawsuit being filed. Make sure your community association is prepared, just in case. Some of the most common lawsuits against community associations are outlined below.

Breach of Fiduciary Duty

A community association is expected to maintain adequate financial reserves to pay for repair, replacement, and maintenance expenses. If homeowners or tenants feel the board is not managing the financial and business affairs of the association well, especially if such management results in an unanticipated special assessment or any other increased cost to the membership, the owners may sue. The association and/or the board, individually or collectively, past or present, may be named as party defendants in such a lawsuit. Likewise, if the association is not living up to its responsibilities and obligations under the association's condominium instruments or governing documents, a member may seek to challenge the association's or Board's action or inaction in this fashion.

Acting Outside of the Board's Scope of Authority or in Violation of its Own Established Policies or Procedures

This is a common lawsuit against the association and its board of directors and occurs generally when an owner believes that the association has acted in a manner or fashion inconsistent with its authority vested in the association condominium instruments or governing documents to the detriment of the association or the individual member of the association. In some cases, this is similar to a derivative lawsuit in the stock corporation setting.



Directors and Officers

Directors must exercise reasonable diligence in fulfilling their responsibilities under the governing legal documents. Board members and other volunteers can be held personally liable for decisions and actions made on behalf of their associations if not performed in a reasonable manner. Any willful or wanton, intentional, or actual criminal action on the part of board member acting in a manner in derogation of the best interests of the association could result in an action directly against the individual serving in that capacity, and in some cases there would be no insurance coverage for such a claim.

Community Association Negligence

The lack of proper maintenance of the association's common elements or common areas and the improvements thereon may open the association to negligence claims brought by third-party individuals such as guests or other invitees of the association or its members. Injuries resulting from slips, trips, and falls are an ongoing source of liability claims against community associations.

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Employment Discrimination

Several federal and state laws prohibit job discrimination, including the Americans with Disabilities Act, the Civil Rights Act, and the Family and Medical Leave Act, among others. Employment practices liability, including claims for wrongful termination and discrimination for not providing reasonable accommodations in the employment setting, is an expanding area of potential liability concern for unwary or uninformed community associations.

Fair Housing Act

The Fair Housing Act makes it unlawful to discriminate in connection to any housing related transaction or provision of services to effectively use that housing based on race, color, religion, national origin, gender, disability, or familial status. In real terms for community associations, violations in the Fair Housing Act occur when associations—

- Wrongly deny a reasonable modification or accommodation request
- Treat applicants differently
- Linguistically profile on the telephone
- Have community association rules that target children
- Automatically evict the mentally disabled
- Fail to allow modifications for the disabled
- Attempt to limit the use of residences for group homes for the disabled.

This area is a minefield for community association that are not familiar with the applicability of the law and the fact that if discrimination is found by the applicable hearing entity or the court, that the once pro-bono attorney fees incurred by the party plaintiff can be claimed and awarded by the court against the discriminatory association. Additionally, the potential exists that part of the order or settlement agreement can dictate fair housing sensitivity training for all those serving on the Board both currently and into the future.

The rights protected by this law are important and should not be minimized! Associations that trivialize the importance of this law and its consequences are doing a disservice to those the law protects as well as to the association and its members. The community association industry needs to educate itself about its parameters and its impact on associations' functions and responsibilities. Associations need to treat any request or claim seriously and respectfully and to work closely with their attorney in responding to and resolving any circumstances involving a Fair Housing request or claim.



Lawsuit Consequences

If a substantial judgment in a lawsuit is made against a community association, the association would likely have to raise dues or have a special assessment. A lawsuit also affects a community association's credit rating. In addition, insurance typically only covers a certain amount of the award, and the association could lose its insurance altogether. If an association is on the losing side of a lawsuit, under the proper circumstances, it might not only be responsible for paying its own attorney fees and court costs, but may ultimately be responsible for the attorney fees of the other party.



Avoiding Lawsuits

Communication is the key for avoiding lawsuits. Community association experts recommend the following:

- Have a ***mechanism for the community association to address conflicts and grievances internally***—establish and follow the stated procedure.
- Send ***periodic newsletters*** from the board informing the community of important upcoming decisions or issues facing the community as a whole. Get out in front of major decisions that can or will impact the members directly by giving them a chance to state their mind at meetings of the board, prior to the board vote and decision on the matter. Avoid surprising and/or ambushing your membership;
- When adopting rules and regulations, ***send the adopted rules*** to the members in the normal course of business.
- Host ***social events*** to foster friendly relationships among neighbors.
- Make sure ***new association members receive and acknowledge in writing the bylaws and governing documents*** when they move in. Create a post-closing “welcome to the neighborhood” packet providing information and contacts within the community and the neighborhood for the new owner/member/resident.
- Post non-privileged information on a ***community web site***, so everyone has access to information.
- Consider hiring a ***professional management company***.
- Make sure the ***board acts reasonably and within the scope*** of the association’s condominium instruments or governing documents.
- Rely on the ***advice of a good attorney and insurance agent***.

Insurance Issues

It is up to the board of directors of a community association, with the assistance of a qualified insurance advisor, to purchase insurance that conforms and complies with all recorded document and statutory insurance requirements.

Community associations owe it to their members to obtain appropriate insurance for their specific situations. Discuss any questions you might have with your insurance representative or contact Steve Dickerson (703-205-8788 or Steve.Dickerson@usi.biz) or Theresa Melson (703-205-8753 or Theresa.Melson@usi.biz).

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- Association Crime Prevention
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- Boiler and Machinery Insurance
- Buying Insurance for Community Associations: Terms to Know
- Claims Handling
- Comparing Insurance Quotes
- Comprehensive Equipment Insurance
- Control Losses in Common Areas
- Control Losses in Individual Units
- Dangerous Drivers and Negligent Entrustment
- Deductible Increases: How to Protect Unit Owners
- Directors & Officers Liability Insurance (D&O): Extend It to Independent Management Agents
- Directors and Officers Liability Insurance (D&O) Insurance
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- Employee Benefits: Be Competitive and In Compliance With Federal Law Without Breaking the Bank
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- Flood Insurance and FEMA Remapping
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- GE Dishwasher Recall
- Handling Claims
- Hiring and Firing Employees
- Hold Harmless Agreements
- Holiday Fun and Safety
- Independent Contractors Insurance Requirements
- Insurance Bills and Requests for Information: What You Need to Know
- Insurance Issues for Community Associations
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- Insurance Premiums v. Cost
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- Legislation in Maryland and Virginia Affect Insurance Requirements for Community Associations
- Liquor Liability
- Maryland Insurance Requirements Clarified
- Master Policy v. Personal Insurance
- Mold and Community Associations
- Personal Insurance: What Every Unit Owner Should Know
- Playground Safety
- Property Insurance: An Overview
- Punitive Damages
- Retirement Plan Fees
- Risk Management
- Risk Management
- Secure Your Home While Traveling
- Security for Community Associations
- Severe Weather Alert—Be Prepared
- Spring Cleaning: Tips on Choosing the Right Landscape Contractor
- Snow And Ice: Be Prepared
- Swimming Pool Safety
- Take a Proactive Stance on Security
- Terrorism and Community Association Insurance
- Terrorism Insurance
- Umbrella Liability Insurance
- Underground Storage Tanks (USTs)
- Water Damage
- Window Safety
- Workers Compensation
- Wrongful Termination Lawsuits