



Braddock District Council Meeting
February 15, 2023

Liability Insurance & Best Practices
A Survey of Coverages & Tips on Doing the Right Thing

Presenters:
Tiago Bezerra & Lindsey Davis

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We are lawyers, so . . . here you go . . .

Legal Disclaimer

This information is not intended to be legal advice. Legal advice must be tailored to the specific facts and circumstances of each case and each association's governing documents.

Every effort has been made to ensure this information is up-to-date. However, it is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the individualized advice of your legal counsel.

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Before we get into insurance...

**An Overview of BDC's
Membership**

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Overview of BDC Members

- Civic Associations
- HOAs/POAs
- Condominiums



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Overview of BDC Members

Most Critical Distinctions

- Automatic v. Voluntary Membership
- Restrictions on Property



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Civic Associations

Notable Distinctions

- Voluntary Membership
- Assessments for Members Only
- Association not typically responsible for enforcing covenants

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Condos/HOAs

Notable Distinctions

- Ownership Structure
 - Condo: Owners own buildings & individual unit
 - POA: Ass'n owns common area; Owners own lots
- Maintenance Responsibility
 - Condo: Owners resp. for units; Ass'n resp. for common elements (with exceptions)
 - POA: Owners resp. for lots; Ass'n resp. for common area

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Condos/HOAs

Documentary Foundations - Condos

- Condominium Instruments – recorded set of documents
 - Declaration (or Master Deed, pre-1974)
 - Bylaws
 - Plats & Plans
- Rules & Regulations
- If incorporated, Articles of Incorporation

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Condos/HOAs

Documentary Foundations - POAs

- Recorded Declaration
 - Aka Covenants, Conditions and Restrictions (CC&Rs)
- Corporate Documents
 - Articles of Incorporation
 - Bylaws
 - Rules & regulations
- Other Miscellaneous Documents
 - Deed of Subdivision
 - Plats
 - Proffers

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Statutory Foundations

- Property Owners' Associations/HOAs
 - Virginia Property Owners' Association Act, Va. Code §55.1-1800
 - Virginia Nonstock Corporation Act, Va. Code §13.1-800
- Condominiums
 - Virginia Condominium Act, Va. Code §55.1-1900
 - Virginia Nonstock Corporation Act, Va. Code §13.1-800
- Civic Associations
 - Virginia Nonstock Corporation Act, Va. Code §13.1-800

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Back to our regularly scheduled programming...

Why insure?

After all, what are the real chances of. . .?

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Risk Pooling

- Spreads Risk Among Many
- Costs Per Participant Manageable
- Benefits Entire Participant Pool – Catastrophe Avoided

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Fiduciary Duty and the Board of Directors



- Board of Directors Has Duty to Membership
- Prudent Business Judgment Required
- Due diligence required to protect Association
- Is Insurance for Ass'n Legally Required?
- What are consequences of failure to obtain coverage?

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Fiduciary Duty

Director Liability

- Generally, Directors are protected.
 - Governing Documents
 - Virginia Nonstock Corporation Act
 - Section 13.1-870.1
 - Section 13.1-870.2
- *Beware:* willful misconduct or bad faith.
- Insurance is **CRITICAL**.

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What Insurance is Legally Required in Virginia?

- **Rule #1:** Check your governing documents
- Legally Required Insurance:
 - POAs/Condos - Employee dishonesty policy (a.k.a. "fidelity bond") for association funds
 - Worker's comp insurance – employees? (*stay tuned*)



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A Tour of the Coverages

- *General Liability*
- *Property Damage Insurance (casualties)*
 - *Special issues: Condo vs. POA*
- *Directors & Officers Liability (D&O)*
- *Fidelity Bond (or Employee Dishonesty)*
- *Cyber Liability*
- *Worker's Comp*

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General Liability Insurance

- Covers injuries on “association” property (e.g., common area, common elements)
- **Typical Claims**
 - Slip-and-fall accidents
 - Injuries in pools, clubhouses, tot lots
- Minimum limits often set in governing docs – usually \$1-2 million (**but consider more depending on association facilities**)
- **Umbrella Coverage?**
 - Facility/risk dependent



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Property Damage Insurance

- Covers **casualty losses** only
- POAs & Civic Associations
 - Covers damage to association facilities
- Condominiums (typically):
 - “Master Policy” → common elements & units
 - Does not cover upgrades or personal property
 - Bylaws usually appoint Board as “trustee” of insurance proceeds to make sure repairs made
 - Owners carry “unit” or HO-6 policies – for personal property + betterments/improvements



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Directors & Officers Liability Coverage

- Applies to claims for **monetary damages**
- Sometimes applies for nonmonetary claims:
 - Discrimination (e.g., fair housing)
 - Claims involving enforcement of gov docs



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Directors & Officers Liability Coverage

- **What is covered?**
 - Defense costs
 - Judgment/Compliance
- **Who is covered?**
 - Directors, officers, committee members, employees
 - Can apply to community manager & agent



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"World Wide" Crime Coverages

- Fidelity Bond or Employee Dishonesty Insurance
 - Theft by officers, directors, employees, agent
 - **Va. Condo & POA Acts require coverage** in amount equal to lesser of:
 - \$1 million --- OR
 - Amount of Assn reserves + ¼ of annual income
 - Minimum of \$10K
 - (But check governing documents too)
- Computer Fraud Coverage
- Depositor's Forgery Coverage



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Cyber Liability Coverage



- **Hacker or virus** destruction of computer software/data or network shutdown
- Compromise of Association **Members Data**?
- Could affect Assn **critical operations**, such as security
- Every Association that conducts business via Internet, stores data or sends emails **at risk**

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Worker's Compensation Insurance



- Covers medical/income benefits for **employees injured** while working
- Associations w/ **no payroll** required to purchase?
 - *Maybe! State law may require WC because officers/directors = employees*
 - *Exception: noncompensated employees/directors of 501(c)(3) corporations & POAs*
- Ramifications of **not renewing** existing WC coverage (civil penalty)

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Final Tips

- Board must undertake **due diligence** on insurance issue
- Do not skimp – rainy days **do** come
- **Meet with your Agent** – picking a carrier and the right limits is important decision
- Ass'n activities and assets (e.g., property, funds) will dictate whether and how much insurance is appropriate

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Final Tips

- Consider needs for limited/special event coverage
 - Meetings/Gatherings
 - Alcohol
- Be aware of exclusions
- Don't miss **renewal dates**
- Understand "insurance defense" relationship

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Q&A

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