

## **Workers' Compensation Insurance for Community Associations**

### **Is Your Association Covered?**

#### **Coverage Description:**

Per Florida Statute 440.10 - Liability for Compensation, the community association might find that they could be financially liable to injuries of others, even though they don't have any direct employees.

There are three primary exposures for community associations for injuries to those performing work on behalf of the association. They are as follows:

- Direct Employees
- Uninsured Subcontractors Employees
- Volunteer Workers insured like Employees

Let's analyze why any of the above can be a problem for the community.

#### **Direct Employees:**

The statute requires that an organization purchase coverage if there are four or more employees (non-construction industry guidelines). For three or less, the organization is still legally liable for compensation to injured employees.

We always recommend that the association purchase a worker's compensation policy. That is the only way to properly protect the members of the community against lawsuits for injuries.

#### **Uninsured Subcontractors:**

We strongly recommend that no job of any size should be let by the organization without proof of insurance from the subcontractor. This should include liability insurance AND worker's compensation insurance.

The organization should secure an ACORD 25 Certificate of Liability Insurance showing proof of both coverages and keep it on file. The problem is if the subcontractor's policy should lapse there is no absolute requirement for the insurer to notify certificate holders of the lapse in coverage.

The applicable words in the Acord Form 25 are "will endeavor to mail" notice. It's not guaranteed that the notice will be sent. The newer forms don't even have this language.

If the subcontractor has no worker's compensation insurance to protect the subcontractor's employees, the duty falls to whoever hired the subcontractor - THE ASSOCIATION!

The association would have to provide medical coverage and loss of wages for the injured employee until full recovery. The association could be forced to special assess all of the members of the community to cover this extraordinary expense. This isn't a very popular option and the board of directors might get sued for not acting in the best interests of the association.

#### **Volunteers:**

Some of our insurers will provide coverage for volunteer workers. It must be noted that the volunteers should be working with board approval.

Secondly, they should only perform low hazard tasks that do not include getting on tall ladders, using certain power tools, climbing on roofs, trimming trees, etc. Light building maintenance, office work and gardening are the types of duties that would be anticipated for volunteers.

The more hazardous duties should always be contracted out. As stated before, Certificates of Insurance should be secured before the work starts.

## **What is the relationship of the community association and its management company on coverage for workers?**

The community management company is the Agent for the association. It operates at the direction of the board of directors of the association. The community association takes full responsibility for the actions of its agent!

The employees working under the management company's worker's compensation policy fall under the co-employer doctrine. The management company's worker's compensation policy is required to protect the employees, if they are injured on the job by agreement between the parties.

The management company's worker's compensation policy, however, DOES NOT extend coverage to the association's subcontractors (or any uninsured subcontractors). Furthermore, it WILL NOT cover association volunteers.

This gap in coverage can only be handled by the association purchasing their own worker's compensation policy.

### **One Note of Caution:**

It is a condition of this worker's compensation policy that the association DOES NOT knowingly hire an uninsured subcontractor! If they do, it could void the insurance contract and the association will have to pay damages for injured employees of subcontractors out of pocket.

The best way that the community associations can protect its membership is to require Certificates of Liability for liability AND worker's compensation for ALL subcontractors- No Exceptions! Also, just a note about the unit owners that contract with subcontractors for their own unit repair work. The association is generally not involved in these activities. The agreement is between those parties and NOT the association.

For some repair work, association approval for the work may be required if it involved common element property including structural alterations, but the contract for service is still the responsibility of the unit owner who signed the contract and paid the contracted price.

The unit owner should also request proof of liability and worker's compensation as the association must do. Otherwise the condominium unit owner homeowner's policy (HO-6) only provides limited coverage under the medical expense section of the policy. This could be anywhere from \$1,000 to \$10,000 in coverage limits, but that is all.