

Worker's Comp Insurance: Why is it so Important to Your Association?

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As a Board Member for an HOA or a condominium, you have a fiduciary duty to all of the association's members. That duty is the highest level of duty that one can have to another person or group of people. You are required to show due care, due diligence and good business judgment in every decision you make on behalf of the association.

Because of that fiduciary duty you should be concerned about properly insured contractors working for your association. To exercise your fiduciary duty properly you should know and understand the basics of the insurance coverage available and what coverage needs to be provided to protect your association from potential negligence (which leads to damages) caused by uninsured/underinsured contractors working on your property. You also should know what other potential liability is created by contractors that are uninsured/underinsured so you can protect your association from potential financial disaster.

When you are on the Board of Directors, you will be asked to sign contracts with contractors to do all types of maintenance and repair work; such as landscaping, carpentry, pool cleaning, etc. Some of the contractors performing the work are large financially stable contractors and some are small "mom and pop" types that survive financially day to day. As you can imagine, the smaller "mom and pop" type contractors most often offer the cheapest prices to do the work.

There are many reasons why their prices are so much less than their larger competitors. One potential reason could be they do not have any Workers Compensation Insurance (WC) and/or they may not have any Commercial General Liability (CGL) insurance or may not have adequate CGL limits.

An example of a contractor you may hire is a landscape contractor. You may hire them to mow the lawn in the association's common areas as well as the cleaning and weeding of the flower beds and planting new shrubs. This type of contractor is often times a small one or two-person company or proprietorship.

Worker's Comp insurance provides coverage for medical bills and lost wages of an injured employee (or owner) that is injured on the job. CGL insurance coverage provides for any bodily injury or property damage caused by their company's negligence to your property. It does not cover the injuries or worse, that may occur to the worker. Negligence can only be proven in a court of law. Anyone suing your association for negligence, whether reasonable or unreasonable, may force you to incur large legal bills to defend yourself while trying to prove your innocence.

Some (if not most) states provide that an employer can file for an "Election of Exemption" that allows them to exempt themselves and a limited number of people in their company from workers comp insurance. This exemption does not relieve the requirement of the employer to pay the doctor and hospital bills as well as the employee's lost wages if the employee is injured in the course of performing their job duties.

Where will this money come from? If the employer (contractor) doesn't provide WC coverage for their employees, then the injured employee may have legal rights against your association's CGL policy if he or she was injured while working on your property, most of the time your CGL insurance will not cover this accident. Additionally, just because the contractor has an exemption doesn't release the negligent parties (possibly your association) from potential liability for the injured party.

What happens if the contractor does not have WC and an employee gets hurt and the employer has no

money to pay the medical bills and/or lost wages? The employee then sues his employer and your association since he was working on your property. Your association probably has the deepest pockets (more insurance than the contractor doing the work) and now all of the members are exposed to a financial hardship supporting legal costs and possibly a large settlement with the injured employee. Worse, if the injury is severe enough to cause the employee's complete disability or demise, the family of the employee may have the ability to pursue legal action against the employer and the association.

Accordingly, a Board should analyze each potential contract to determine if the proposed vendor carries worker comp insurance. If yes, there is no further decision to be made. If, however, the proposed contractor is not legally required to carry such insurance, then the Board must consider what task will be performed by the vendor and decide if it carries with it a reasonable chance of accident and injury. For example, if the vendor is a roofer, landscaper or tree trimmer, workers compensation insurance should be required as the chance for injury is much greater than say a CPA or an attorney attending a board meeting.

The big question is: As an Association Board who approves and hires the contractor, are you negligent if you don't verify the contractor's insurance as well as adequate limits of insurance prior to letting them start work on your property or, in granting a waiver knowing they don't? Is this an acceptable risk to the members of your association? Could your association handle the costs of a long legal battle and the possibility of a huge award to the injured worker or a disabled worker or to the family of a deceased worker?

Is the gamble worth the few dollars or even the few hundred dollars you might save using an uninsured company to do the job?