

# The Claim Has Landed – Now What?

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## INTRODUCTION

Most individuals and families choose to live in a common interest development<sup>1</sup> thinking that the maintenance of their physical and social environment will be substantially taken care of for them. No matter how well a community is managed, as sure as there is death and taxes, at some point there will be an incident that will give rise to a potential occurrence or claim requiring the association to respond. This reality gives rise to the necessary evil of insurance. In a perfect world, upon the happening of such an incident, the association representative would make a single phone call to the insurance company, provide the requested information and the insurer would immediately make a direct deposit for the claim into the association's account or arrange any other requested solution or remediation.

In the real world, the process is not always that simple. However, it does not have to be as complicated or as frustrating as it often is. The fortunate fact is that most associations do not have claims on any regular basis. The consequence of this, however, is that not many associations are experienced in the claim's process and many do not have or do not think to seek assistance from professionals who are experienced in claims handling. Most frustration is the result of a lack of knowledge of the various insurance products compounded with weak communication between the insured and the insurance carrier representatives.

Contrary to the belief of many insureds, most insurance companies do not sit back and try to figure out ways to deny claims. Insurance companies are in business to make money and if they do not have satisfied customers, they do not sell insurance. Yes, insurance carriers work hard to minimize losses, but insurance is priced to contemplate losses. If there were never losses, there would never be a need for insurance in the first place. If you ask most claim professionals, there is nothing they like better than to receive a claim or loss submission that fits within the parameters of coverage and is properly documented. That would allow the adjuster or analyst to pay making the insured happy. Moreover, with a properly documented file the adjuster's auditors will be happy as well. A great deal of frustration by insureds emanates from their not

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<sup>1</sup> Common Interest Developments come in all shapes and colors including: condominiums, cooperatives, single family homeowner associations, timeshare associations, rental pool associations, condo/hotels, commercial condominium associations, dockominiums. The basic common denominator is that you have a not-for-profit entity where membership in the association is premised on real property ownership and the association is formed to manage the common interest.

understanding that the claims representative has a job to do, procedures to follow and is accountable for their decisions.

The knowledge component of the claim process involves understanding the community association insurance puzzle and what insurance products provide the requisite protection. That topic is not the direct subject matter of this article, but has been addressed in other works that can be made available.<sup>2</sup> What insureds must keep in mind during the claim process is that not every potential risk is covered by insurance. This is generally the result of one of two factors: (1) the risk is not insurable; or, (2) the insured made an economic decision not to purchase all available coverage (specifically, not all insurance products are created equal). That having been said, this article focuses on what to do when a loss occurs or a claim is received. Specifically, the focus will be on:

- The most common mistakes associations or their representatives make when submitting or handling a claim.
- Key advice for associations or their representatives for smooth and effective submission and handling of a claim.
- Recommendations for claims prevention?
- What plans an association should have in place pre-claim to make the inevitable claim situation smoother and more expeditious?
- What an attorney working with an association in a claim situation should know?

To answer these questions, responses were elicited from a variety of community association professionals including carrier employed claim analysts, public adjusters, insurance brokers, attorneys and management professionals.<sup>3</sup> The hope is that the combination of these responses will provide some valuable guidance to those representing community association clients.

## **THE MOST COMMON MISTAKES ASSOCIATIONS OR THEIR REPRESENTATIVES MAKE WHEN SUBMITTING OR HANDLING A CLAIM**

One of the nice things about other people's mistakes is that the rest of us can learn from them more cheaply than as if we had made the mistake ourselves. The community association professionals providing their thoughts have identified the following common mistakes.

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<sup>2</sup> You can contact the author at [jmeskin@mcgowaninsurance.com](mailto:jmeskin@mcgowaninsurance.com) for various articles and links to others who can also provide relevant and useful information.

<sup>3</sup> The contributing community association professionals are acknowledged at the end of this article.

## **Notice**

The number one identified mistake, which includes numerous issues, revolves around giving notice of a claim, occurrence or loss. The following are some of the key issues:

**Forgetting to notify all carriers** – Most associations have numerous components to their insurance program. Sometimes management or a broker do not place all carriers for the association on notice because they do not believe there is coverage, or they do not think that a certain policy may in fact provide coverage. Some prescribe to the philosophy of “shot gun” notice where all carriers no matter how improbable coverage should be put on notice and let the carriers make the coverage decisions. Others opine that the submission should be somewhat more surgical. Tip: Knowledge of the insurance products and the selection of knowledgeable professionals go far to minimize this potential issue.

**Not Understanding Pre-tender issue** - As I am drafting this portion of the article, I received notice of a claim from a broker. In the notice, the broker indicates “*that the insured would like to have its own counsel, because that counsel has been working on pre-suit issues involving the claim.*” This in and of itself may raise issues as to why notice was not previously given. Were these “facts and circumstances” that an insured believes could reasonably give rise to a “claim”? One consequential issue that may arise is who is responsible for pre-tender attorney fees and costs. It is always the association’s choice whether to allow its own counsel to handle a matter. Tip: Association counsel should be sure to advise an association of potential issues with respect certain pre-tender attorney fees and costs not being covered under the terms and conditions of the policy.

**Not Understanding Notice and Reporting requirements** – Many association representatives do not understand the reporting requirements under the various insurance policies and consequently may fail to satisfy them. Too many times a policy requires notice to the carrier of a potential claim, not just after a complaint is served. Boards/management need to be familiar with the policy requirements. Tip: This condition and requirement of the policy should be understood when the policy is first delivered and not when the claim or other occurrence happens.

**Failure to Follow-up** – Although most of us brokers never make errors or forget things, it is prudent to follow up to make sure the insurance broker actually notified the insurance carrier. The board will ask management to put carriers on notice and management will telephone or email the insurance broker. A written response by the broker as well as making sure the carrier acknowledges the claim filing is important and can result in a declination if the board, management and/or the broker does not do their job. This is not a time where ignorance is

bliss. Tip: Although insurers need reasonable time to process a claim, *it is not wise to sit back and make any assumptions that claims have been received.*

**Untimely reporting** – The consequences of not submitting a matter in a timely manner has a number of potential negative consequences. Unfortunately, people always think it will work its way out. However, in life that seems to only apply to the other guy. Different states treat late notice differently some requiring that a carrier be prejudiced. The timeliness issue also takes on different consequences depending on the type of loss or claim that is being contemplated. For example, “property” loss claims require active steps by insureds to “mitigate” damages and to prevent the exacerbation of a loss. This is particularly the case in water damage claims where the notorious and infamous “mold” potentially lurks in any such claim.

### **Poor Communication**

The failure to communicate, as my wife so often tells me, is the root of many problems. In the claim context, this failure takes on many shapes and sizes.

- First, many associations approach the claim situation as an “adversarial” process and only provide that information they think the carrier needs to know requiring the carrier to come back multiple times with additional follow-up questions.
- Second, associations do not designate a single person to be the liaison for the association regarding a claim: “too many cooks in the kitchen.” Accordingly, there is inconsistent and incomplete information being provided.
- Third, associations hold back information thinking that it may have a negative impact on coverage. The reality is that *what will be will be* and that the association should err on the side of providing information and let the carrier determine what is or is not needed.
- Fourth, there is often a dropped ball when boards change or property management companies or employees change.

### **Weak Documentation**

The failure to properly document a loss or to keep records of what has happened is a critical flaw in the resolution of many claims.

- The document process for associations must start far in advance of any claim. The associations often do not have any procedures or protocols for pre or post claim situations.
- Associations and managers often do not thoroughly record or memorialize claim information or relevant facts and circumstances

- The key requirement of a claim representative is to document his or her file. The source of those documents is the insureds. This is one of those situations where all the insureds need to do is put themselves in the place of the adjuster: would they write a check for something based on the information they have provided if it was coming out of their pocket?
- Although it may sound obvious, many associations and their agents or representatives fail to take pictures of damages and other physical evidence of a claim. This would also include video taping of various situations if appropriate. We all know that “a picture tells a thousand words.” It is also imperative that the association document who took the pictures, when and who else was present at the time. For example what is more telling the statement that: the *building was damaged* or the picture showing the damage?



### **Failure to Understand Choice of Counsel**

The counsel issue is multi-faceted.

- Many associations are small or self managed and do not actually have counsel, probably because they have not had occasion to need counsel. (Remember that there is a substantial number of small self managed associations around the country) Accordingly, when a claim comes in, many times a board member calls the first attorney he or she knows (we have all received those calls), or the attorney that they use in their non-association business. Selecting counsel that is not versed in Community Association law and insurance is potentially a huge mistake.
- Sometimes, the association has counsel that handles its affairs on a general corporate basis. These attorneys may not be familiar with claims and/or litigation issues. Just because the attorney does work for the association does not mean that the association’s counsel is the correct one to handle a claim. There could be issues regarding the requirement to use an insurer’s panel counsel. Sometimes counsel will hold onto and work on a matter prior to submitting it to the carrier possibly exposing the insured to attorney fees and costs that may not be reimbursable pursuant to the terms and conditions of the policy. There are also potential conflicts of interest issues. We will assume that counsel will err on the side of caution with respect to conflict issues. However, associations

must be cognizant of the fact that issues arising in the claim may have involved work or recommendations given by the association counsel.

- The choice of counsel is an issue that is hotly disputed by many attorneys.<sup>4</sup> Many attorneys are of the opinion that they know the association, they know the players and they can resolve issues much more expeditiously. This is often true, and I believe that most carriers are willing to entertain this type of request if the matter is specifically articulated and presented to the carrier. Again, carriers are in the business of making money and if something is cost effective, most will listen.
- Similarly, very often property managers push for the use of certain counsel. This can be a positive, because the property managers know who are capable of resolving issues expeditiously. On the other hand, it is imperative that property managers keep the association's best interests in mind.
- Many claims may be minor and do not require the assistance of counsel, but an association must not be penny wise and pound foolish in this regard. The basic fiduciary obligation of a board is to seek assistance by professionals when something exceeds the board's competence.

### **Failure to Protect Privilege**

Associations often fail to handle issues in a method that may protect the attorney/client privilege in the event that a matter does in fact mature into litigation. This is another reason that a board may want to err on the side of use of counsel and where a board may want to establish one individual or an executive committee to discuss potential litigation issues. This in turn will assist in preserving privilege.

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<sup>4</sup> Most liability policies including general liability and directors and officer policies give the insurer the right pursuant to the terms and conditions of the policy to appoint counsel where there is a duty to defend. Contrary to many notions, the selection of defense counsel is not a random or capricious process. It should be helpful to understand some of the reasons behind the control of defense counsel issue. The counsel requested by the manager or the board to represent them is usually the counsel most familiar with the manager and the association and they have a basic comfort level. This makes sense and we understand it. However, counsel that generally is familiar with the manager and the association is also the counsel that very likely was involved in counseling the association with respect to the decision which is the subject matter of the claim being submitted. This gives rise to a potential conflict of interest, and may in fact not be in the association's best interest. Counsel that is generally familiar with the manager and the association may in fact be the counsel that generated the governing documents in question, the by-laws at issue, or the architectural guidelines being challenged. Again, this gives rise to a potential conflict of interest, and may in fact not be in the association's best interest. When the carrier chooses its "panel counsel" it generally selects counsel that specializes in specific areas. The issue involved may be a property rights' issue requiring one counsel, or an employment related issue requiring another counsel, or another counsel to address a defamation issue. By having its panel of counsel, the carrier can select the appropriate counsel. When the carrier has panel counsel, it also is able to better control costs and expenses, which in turn will directly impact the fiscal stability of the insurance program in the long run and the costs to the insureds. .

## **Failure to Properly use Contractors and Deal with Repairs**

A common mistake identified by many experts involves property damage claims. As we know, most insurance policies require the mitigation of damages and to address emergency situations. However, what many insureds fail to do is limit the fix to those issues and continue the work, sometimes at the encouragement of contractors, before they are approved by the carrier. As indicated, the adjuster must dot his/her "i(s) and cross his/her "t(s)" before approving a claim. A common mistake is also signing contracts before reviewing them, not getting the proper bids, and not confirming licenses and insurance. A great tip is to never accept a "certificate of insurance" directly from a vendor.<sup>5</sup> Make sure that the vendor's insurance agent or broker provides you with a current certificate directly and make sure you check the effective dates of coverage and diary your calendar to confirm that the coverage has been renewed. As hard as it is to imagine, not all vendors have impeccable scruples. It has also been pointed out that many times the association and/or the community manager may have its own staff clean up certain damage or loss that should in fact be handled by professionals. Again, most associations experienced with water damage claims understand that issues involving mold may arise, especially if remediation is not done correctly.

## **Failure to Understand Coverage**

Although substantive coverage issues are not the focus of this article, there are a few basic concepts that arise when identifying common mistakes in the claim handling arena. These issues are often misunderstood and lead to frustration.

**Defense and Indemnity** - Insurance comes in two basic forms. First party coverage is where the insured is provided "indemnity" for a loss to his/her/its property. The basic example is property coverage. These claims are handled generally directly between the insured and his or her agent, property manager or independent adjuster and the carrier. The other is a third party policy (otherwise known as a liability policy) where the carrier provides two forms of coverage to the insured: (1) a "defense" against a claim or lawsuit; and/or (2) an "indemnity" on behalf of the insured for any liability the insured may have to a third party. As most attorneys know, the "defense" obligation is generally broader than the "indemnity" obligation. In most jurisdictions, if the complaint has any potential indemnity obligation, the carrier must defend the entirety of the action. At the same time, the carrier may "reserve its rights" to deny any indemnity obligation at the time of a judgment or settlement based on whether the judgment or damages are not in fact covered. In addition, especially in the Directors and

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<sup>5</sup> Association boards must always be cognizant of the fact that they manage pursuant to a fiduciary obligation that requires them to put the association's interest first and personal relationships with vendors may not always be in the best interest of the association. Board members should consider not participating in decisions where there is a personal relationship with a vendor.

Officers context, there may be instances where the policy provides “defense” only coverage. Counsel must insure that its insureds understand these issues.

**Retention/Deductible** - With few exceptions, most policies and coverages contain retentions/deductibles. This is the amount that the association takes on with respect to the loss. The value of large deductibles could be the topic of another article and should probably be considered by most associations. The issues that are often most misunderstood are the following:

- How does the deductible work – does the association have to pay it up front, or is it paid at the end? In the normal course, the initial bills will be handled directly by the association until the retention is exhausted.
- A big issue is whether defense fees and costs incurred by the association prior to tender of defense will go to credit the deductible. This is generally not the case. The deductible clock does not generally start to tick until the matter is tendered. This is where many associations get themselves in trouble with carriers by allowing their counsel to handle matters in the beginning.

#### **KEY ADVICE FOR ASSOCIATIONS OR THEIR REPRESENTATIVES FOR SMOOTH AND EFFECTIVE SUBMISSION AND HANDLING OF A CLAIM.**

This is a topic that if any of us or any of the association boards or management personnel sat down and really thought this through, they would probably come to the same pieces of advice as are provided below by Attorney Marc Markel. Attorney Markel, one of the leading community association attorneys in the nation provides the five following recommendations:

- Call your attorney and request his or her input as soon as possible (an ounce of prevention is worth a pound of cure)
- Consult with your association’s insurance agent to ensure all coverage requirements are satisfied in a timely manner. (As another professional has also pointed out, make sure your insurance agent is not just a salesperson, but also is an advocate for the association at the time of loss. This is where the insurance professional’s experience in this industry is very crucial).
- Document everything; take loads of pictures and video if possible
- Do not execute a contract without talking it over with your attorney first
- Beware of assignment of insurance proceeds clauses / one-page contracts provided by contractors

- Engage the services of a licensed engineer that is qualified to oversee the association's efforts

In addition to the basic recommendations above, other valuable recommendations have been identified:

- Communication. It is imperative that all the critical decision makers are kept in the information loop such as the community manager, board members, homeowners, adjuster, carrier, agent, contractor(s), etc.
- Even though communication is critical, it is just as critical for there to be a designated liaison to be at the center of the communication wheel. It is imperative that an association not have multiple people communicating with the insurance representative.
- To obviate miscommunication, it is recommended that when there are key inspections or site visits that all relevant parties participate. There should also be in place an understanding of the scope of the inspection.
- Although it would seem obvious, it should go without saying that all claim submissions should be in writing and that all communications should be confirmed in writing.
- Each claim should always be approached as if "time" is critical. Rarely is "time" our friend in a claim situation.
- If a matter has matured into litigation, the insured and all the insured's agents and representatives must be counseled in following the direction of counsel to avoid any impact on privileged matters.

## **RECOMMENDATIONS FOR CLAIM PREVENTION**

### **Reserve Study**

In this author's opinion, the keystone to "claim prevention" and effective community management begins with a reserve study. This opinion presumes that the reserve study is done by a qualified reserve study firm. In addition, it is imperative that the reserve study is properly funded and continually updated.<sup>6</sup> Many claims whether they be property, liability or director & officer claims can relate back to issues that would have been identified in a reserve study.<sup>7</sup> In a perfect world, the initial reserve study should be completed by the association developer; or, at a minimum, there should be a "transition" study done at the time control of the board is transitioned from the developer to the association. In consulting developers, we highly recommend that they commission a reserve study so that there are no surprises or issues that come up down the road.

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<sup>6</sup> It should be noted that this author does not have any interest in any reserve study company.

<sup>7</sup> If you are interested in Reserve Study companies, you can go to the Community Association Institute's website and check with those firms advertising, especially those who have earned the CAI designation of Reserve Specialist.

Related to the reserve study is the basic notion that maintaining the association in proper repair is critical to claim prevention. Very often when we underwrite director and officer policies, brokers, managers and association boards wonder why we often ask for financials and/or budgets. Sometimes it has to do with the financial condition of the association, but more often it has to do with whether the reserves are being funded or exist or whether repairs and capital improvements are being completed. If you review an audited financial for an association, you will find many of these issues addressed.

### **Governing Document Reviews and Updates**

As a connoisseur of director & officer claims, it has become clear that many claims arise from governing documents (primarily the by-laws and conditions, covenants and restrictions) that have not been reviewed or updated. In most situations, governing documents are originally prepared by a developer. In many cases, these documents are “boiler plate.” Very often at the time of original development or transition of control, the true needs and nature of an association are not yet mature. Contrary to what many associations may assume, the documents are not written in stone. It is important that the governing documents be reviewed to make sure they work for an association and it is important that they are updated with current law. Very often a claim arises where an association did “everything by the book”, but if the book is wrong, that is not a defense.

A common issue for many associations is the failure to timely memorialize changes and decisions. Although it will shock many of you, there are times when associations do not memorialize decisions or changes at all. As most of you know when a written rule is challenged and the defense is we changed it, but did not memorialize it, we know who will win in the end. **It is imperative that associations keep good minutes and follow the basic rules regarding minutes and the approval of minutes.**

Most claim prevention falls under the old adage of “penny wise and pound foolish.” I am not aware of a single jurisdiction in this country that does not have a community association legal specialist that does not have a program whereby the review of governing documents can not be done and reviewed on an annual basis at a reasonable cost.

### **Board Education and Training**

Most readers are probably on the floor right now from laughter at this sub-topic. It seems too many of us that work for or with community association boards that the volunteer boards “already know everything.” It is the fiduciary obligation of the boards to review, investigate and challenge us professionals. That is good. However, there are many boards that either do not seek out counsel or ignore it for reasons that may not be in the best interest of the

associations. First, it should also go without saying that board members and community managers should know and understand the association's governing documents. Many people sit on volunteer boards and believe that if they use "common sense" that they will be able to do the right thing. As many of us in the real world know, governing documents and laws do not always comport to what the reasonable person would assume is "common sense."

A reality of community association volunteer boards is that in most cases, they are constantly changing. Accordingly, the education and training process does not ever stop. This is a great "loss leader" opportunity for community association law firms and other professionals to offer "free" or discounted training to boards. Many of the claims we see involve issues that just would not have occurred if boards read and understood their governing documents, the basic protocol of board operations and having procedures in place.

Another highly effective risk management tool is to make sure that new association members know what their rights, duties and obligations are in the community association. There have been some associations that have commissioned an introductory video for new association members (since we live in a T.V. generation) that will highlight and focus on important items and those that are often misunderstood. As we all know, the governing documents can often be daunting when delivered or handed over. This can also be achieved by having the association website have a section on Most Frequently Asked Questions.

### **Roberts Rules of Order**

One of the common mistakes that boards make is that they do not approach the management of the association as a "business." In most cases, the association incorporates the association member's greatest financial asset and its greatest lifestyle asset. Yet, boards do not treat the management of the association as it would a business. Many board members sit on the PTA boards, AYSO boards, Church and Synagogue boards and many other boards. Most properly run boards use some type of Rules of Order such as Roberts Rules of Order.<sup>8</sup> Associations we work with range from 2 to 3 units to 20,000 units. Regardless of the size, the use of a protocol for the operation of meetings will obviate many claims and issues. In the end, most people want their "day in court." The board must both give all members their opportunity to talk, but they must also limit them pursuant to reasonable and established rules. Boards that have such rules in place generally run smoother and meetings are much more efficient.

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<sup>8</sup> The Community Association Institute website bookstore has a very useful pamphlet entitled "The a-b-c's of PARLIMENTARY RPOCEDURE." The last I checked, this was a \$3.00 cost. I think this would be a great gift for professionals to give to their association clients. Again, I have no pecuniary interest in this item.

## Professionals

One of the key fiduciary obligations of a board in the management of an association is to recognize where professional assistance is appropriate. I have never seen a set of governing documents (although some may exist somewhere) that does not provide a board with the authority to retain the use of professionals or experts where the matter at hand is beyond the competence of the board.<sup>9</sup> In this regard, when an association or board member is presented with a claim or loss situation, they must evaluate whether they should seek the assistance of a professional.

## Early Intervention and Alternative Dispute Resolution

In the community associations, many of the issues that are presented arise out of facts and circumstances that actually are known prior to the actual claim or lawsuit. Many of these disputes could be resolved long before the issues mature into claims or irreversible problems. Associations should also consider having dispute resolution programs incorporated into their governing documents. As indicated, many people just want to have their voice heard and to be able to understand what their rights, duties and obligations are.

## WHAT PLANS AN ASSOCIATION SHOULD HAVE IN PLACE PRE-CLAIM TO MAKE THE INEVITABLE CLAIM SITUATION SMOOTHER AND MORE EXPEDITIOUS?

In addition to the claim prevention items set forth above, there are many other items that an association can have in place to both help minimize claims and to make the claim situation much easier.

- **Disaster Plan** - Like any entity in the 21<sup>st</sup> Century, associations should have a disaster plan in place. Each association exists in a unique geographic location that has its own disaster challenges from earthquakes in California, to hurricanes in Florida to hail in Minnesota. Each potential disaster has its unique challenges and when you live in a “common interest development” you by definition have a responsibility for your neighbors to one degree or another. What a disaster plan has to do with claims is it will have in place methods to avoid certain consequential damages or claims and should have teams in place to be prepared and trained to address the issues.

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<sup>9</sup> As a side note, boards must be cognizant of the fact that although they may have professionals sitting on their boards, director and officer liability policies generally do not extend to professional malpractice of those board members in their capacity as such. Rather, they are covered in their capacity as a board member, but not as an expert and/or professional. Thus, if the association relies on the expert and the expert is wrong, they will not be able to look to the D&O policy for coverage.

- **Insurance Schedules** - The association should also be aware of its insurance coverage and its deductibles. The association should know before a claim what is required and not try and educate itself after the claim has occurred. This is where a schedule of insurance provided by the association's insurance professional comes into play. Also, the association should know whether it needs to contact the insurance agent or the carrier directly in the event of a claim. The manager and the appropriate board members should have a notebook with current copies of all insurance policies including any endorsements.
- **Written procedures** - The association should have **written procedures in place in the event of a claim or loss.**
- **Emergency Authority Matrix** - As one professional has recommended, it is critical that a board know what and what it can not do in the event of a disaster. What emergency steps and authority does the board or manager have in the event of a loss? Again, reliance on pure common sense should not be the course of action.
- **Alternates line up** - A board should also have alternates in place in the event that a designated board member or manager are not available, or as Murphy's Law would have it, a board that did everything correctly would receive a claim with the person charged with the handling on a cruise of the Greek Islands.
- **Counsel** - If an association has counsel, the counsel should be ware of what the association policies, primarily the liability policies where the association may be on the defendant/respondent end of a claim or lawsuit, what the terms and conditions of the policy provides with respect to selection of counsel or use of an association's counsel of choice.<sup>10</sup>

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<sup>10</sup> As discussed, this is a multiple edged sword.

- The association's counsel is generally familiar with the association and already has a good working relationship with the association which could help expedite a claim.
- The association's counsel may have a conflict of interest having counseled on the issue that is the subject matter of a claim, or may be the drafter of the governing documents that may be at issue.
- Many association counsel or managers have a notion that insurer panel counsel is not qualified to handle a matter on behalf of an association. Although this can be debated, carriers have panel counsel for many legitimate reasons. As we know, the insurer is in business. Panel counsel are approved and used to obviate the recreation of the wheel and to hopefully expeditiously resolve a matter which in most cases they have handled on numerous occasions. Also, panel counsel is often dispassionate and more able to be objective in the resolution of association matters which are often emotional in nature due to the relationships of association members.

- **Deductibles** – The association should understand what deductibles they have prior to claims and they should have clear policies with respect to how deductibles are handled and who is responsible for what.
- **Association Member education** – expanding on the notion that surprises are not our friends, it is highly recommended that the association educate their members on where the Master Association Insurance begins and ends and where the Unit Owners Personal insurance begins and ends. This is often a mystery to associations and their members. This is where the insurance professional can be of great assistance.
- **Vendors** – like other plan details, it is important to have various vendors lined up, specifically emergency personnel. As we all know, vendors are more than happy to give presentations and to be on call in the event of various issues from water to fire.

## **WHAT AN ATTORNEY WORKING WITH AN ASSOCIATION IN A CLAIM SITUATION SHOULD KNOW?**

An attorney working with an association in a claim scenario should first know everything covered in this article thus far. In brief, the association counsel in representing a community association, like any other client, must be sure that he or she has the basic competency in this industry niche which may seem fairly straight forward, but clearly has its own unique qualities and dynamics.

- Know the association
- Know the association's governing documents
- Know the association's insurance program
- Know the notice provisions and the counsel provisions of all the association's insurance provisions
- Know which insurers will allow you to handle a matter, or what they require to be able to consider your firm. In brief, a carrier wants you to articulate why you, as opposed to panel counsel, are better suited to obtain an expeditious and economical resolution of a claim. They are also normally going to want to understand your fee schedule and will require, assuming this is not a *Cumis Counsel* situation, that you report and communicate to the same extent and degree as panel counsel.

## **CONCLUSION**

The intent of this article is to provide some guidance for the handling of a claim. I do not doubt that many of the readers could provide a more thorough and valuable tool to accomplish this goal. I hope that all those with such information to provide will make it available to our community of community association attorneys.

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I would like to thank the following community association professionals and others for their contribution to this article.

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