

# ACTHA NEWS & UPDATE

Association of Condominium, Townhouse & Homeowners Associations 343 S. Dearborn, Room 304 • Chicago, Illinois • (312) 987-1906

JULY-AUGUST 1991

## ACTHA HOSTS ALL-DAY CONFERENCE SEPTEMBER 14

ACTHA will sponsor an All-Day Conference on Saturday, September 14 from 9 a.m. - 3 p.m. at the College of DuPage in Glen Ellyn. The pre-registered rate for ACTHA members is \$35 per person (\$40 at the door). Registration includes lunch and materials.

For detailed information on the Conference and the seminars being offered, see page 5; registration form is on the last page.

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## CONDO INSURANCE: WHAT YOU DON'T KNOW CAN REALLY HURT!!!

(By: Steven R. Heuberger, President of Villa Management, Ltd. based in Vernon Hills and also a supporting member of ACTHA)

The subject of insurance in respect to condominium and homeowners associations sometimes strikes fear in the minds of board members. Unfortunately, what you don't know about insurance can really hurt. One of the most sensitive areas where lack of knowledge of insurance can hurt a board member is failure to properly insure for directors and officers liability. Since insurance is generally a big ticket item in the budget of condominium and homeowner associations, and since boards are inclined to think all policies are the same, the decision to select an insurance policy is generally based upon the best bid. As you will see from this article, that can produce devastating results for unwary board members.

Directors and officers insurance is that coverage which protects the board of directors from allegations that they committed wrongful acts during their term. There are two forms of directors and officers liability insurance. The first form is called an occurrence form. Simply defined, an occurrence form directors and officers liability policy covers wrongful acts that are committed during the policy period. The date the wrongful act occurred establishes which policy will cover the loss under an occurrence form policy. A claims made form directors and officers liability policy is a policy that will cover a loss when the claim is made. Therefore, under a claims made policy, the policy that is in force at the time the claim is made, regardless of when the wrongful act occurred, is the policy that covers the loss.

Knowing what form of directors and officers liability insurance you have, and what you need is essential in avoiding an uninsured gap in coverage. Unfortunately, few condominium boards and/or homeowners associations create insurance bid specifications for insurance agents and/or brokers.

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Therefore, the insurance agents/and or brokers bid what their companies offer, irrespective as to the form the Association truly needs. As a result, it is essential that the association inquire as to what type of directors and officers liability insurance the particular agent and/or broker is offering before making their decision.

From a formula point of view, the following general rule applies: you can go from an occurrence form to a claims made form; you can go from a claims made form to a claims made form; you can go from an occurrence form to a claims made form; but you can never go from a claims made form to an occurrence form without creating an uninsured gap in coverage.

For illustration purposes, here is how the uninsured gap is created by an association when it goes from an claims made directors and officers liability form policy to an occurrence form directors and officers liability policy. Assume that the policy in existence is a claims made type with a policy term of January 1, 1991, to January 1, 1992. Further assume that the association decides to switch to an occurrence type form directors and officers liability with a policy period of January 1, 1992 to January 1, 1993. Assume further that the alleged wrongful act takes place on the date of June 30, 1990. Since the claims made policy is no longer in force, it would not cover the loss. In addition, since the occurrence form policy did not begin until January 1, 1991, it would not cover the period of the wrongful act. Therefore, the loss would be uninsured. Not only would the

Association and/or its board individually be responsible for the amount of damages proved by the plaintiff, they would also be responsible for paying all of the court costs and legal fees to defend the cause of action. This could be a huge sum of money, which could bankrupt board members and/or the association.

In conclusion, it is essential that board members know what type of director and officers liability coverage they have and need.

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the purchaser or a unit owner in order to be effective.

The Governor will not act on this legislation until September. If your association wishes to make comments on these proposed changes to the law, you should contact the Governor by writing the State Capitol in Springfield. These changes are embodied in H.B. 1929.

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COMING, COMING, COMING!!!

ACTHA's 1991-92 Commercial Directory, listing our supporting members which specialize in serving the condominium/townhome market, will be mailed with the September newsletter.

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CONGRATULATIONS ! ! !

to HOA Management Group which recently moved their offices. A supporting member of ACTHA, they can now be located at 5329 S. Main St., Ste. 106, Downers Grove, 708-971-9010.

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