



HindmanSanchez

Directors and Officers Liability Insurance: Prior Acts Coverage

Directors and Officers (D&O) Liability Insurance (or Association Professional Liability Insurance) provides coverage for the directors and officers of an association, as well as the association itself for the cost of defense and claims arising from lawsuits alleging that the directors or the association failed to properly perform their required duties. Every association should maintain continuous Directors and Officers Liability Insurance to provide funds for defense and to protect directors' and association assets in the event of a claims award.

There are numerous pitfalls associations must be aware of when purchasing and maintaining continuous coverage for directors and officers. These will be discussed in future newsletters. This article will discuss the importance of "Prior Acts" coverage or an "Extended Reporting Period Endorsement."

Most Directors and Officers Liability policies are written on a "Claims Made" basis. Under a "Claims Made" policy there are two requirements that must be met in order for there to be coverage under the terms of the policy: (1) the claim must be first made and reported during the policy period; (2) the erroneous act for which claim is being made must have occurred during the policy period.

When an association changes insurance companies it must be sure the new company will provide: (1) "Prior Acts" coverage or (2) honor the original "Retro Date" (the date claims made coverage was first purchased) or (3) an "Extended Reporting Period Endorsement" must be purchased from the previous company to protect against the possibility of a claim being brought for an act that has occurred for which the association has no knowledge. If the act occurred under the prior insurance company and the claim is brought under the new company, there is no protection by either insurance company because the two requirements that trigger coverage under a "Claims Made" form have not occurred during the same policy period unless you have taken positive action with one of the foregoing three options to eliminate the gap in coverage.

When Directors and Officers Liability coverage is included with the association's package insurance policy, many insurance companies will not provide "Prior Acts" or honor "Retro Dates." Most offer "Extended Reporting Period Endorsements" but are limited in time.

It is recommended associations consider removing Directors and Officers Liability coverage from the package policy when bidding the insurance to a new company and place it with an insurance company that specializes in Directors and Officers insurance (or Association Professional Liability Insurance) and who will provide "Prior Acts" coverage if the association has no knowledge of a potential claim. There are several specialty companies who will afford this valuable protection including Travelers Bond Insurance Company and Chubb.

HindmanSanchez P.C. Attorneys at Law • Denver & Fort Collins

5610 Ward Road., Suite 300, Arvada, Colorado 80002-1310 Tel 303.432.9999 Free 800.809.5242 Fax 303.432.0999 www.hindmansanchez.com