

# The Art of Risk Transfer for a Community Association

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When you raised your hand or, dare I say it, were coerced in to joining the board of directors for your community association did you ever really appreciate the magnitude of your responsibilities? Here you are, just one of maybe five individuals serving on the board of directors and you're effectively running a municipality and, yes, some of these municipalities (communities) have more assets and a population greater than many towns in our State! That's a lot of responsibility so thank you for stepping up to the plate. Your volunteering was a risk you took unto itself so maybe the following paragraphs might resonate with you.

In preparing for this article I thought I'd look up the definition of 'risk.' Wow, I was stunned by the numerous definitions in various dictionaries so, being of British heritage, I reverted to the Oxford English Dictionary. *Risk* (noun) is defined as 1) a situation involving exposure to danger; 2) the possibility that something unpleasant will happen; 3) a person or thing causing a risk or regarded in relation to risk: *a fire risk*. The definition for *Risk* (verb) is 1) expose to danger or loss; 2) act in such a way as to incur the risk of; 3) incur risk by engaging in (an action). With that out of the way, now back to you, your board of directors, and the association. How can you transfer the inherent risks of both running and protecting the assets of your association? There are two primary methods of transferring risk. These are **insurance** and **contractual**.

## Insurance

When you purchase insurance for your association you are transferring risk to an insurance company under a contract. This is for a premium. The board of directors is entrusted with purchasing insurance for the association that both meets the requirements as set forth in the declaration or covenants and is prudent given the scope of your assets and operations. There are many considerations that go in to this decision because, remember, if the risk isn't transferred to an insurance company it is retained by you!

My first suggestion to anyone purchasing insurance for their association is to work with an agent who is both experienced and knowledgeable for your kind of risk. There are industry specialists who understand your documents, the requirements of mortgagees, the Condominium Act if applicable, and the pros and cons of various coverages to protect your assets. No two policies are alike so knowing what you are transferring under the terms of the contract is very important. Even if you have your management firm purchase the association's insurance, you are the policyholder and therefore the ultimate decision maker. They take no responsibility for coverage or limits. To this end you have a vested interest in meeting your insurance agent and exploring the options for risk transfer.


In my industry experience there are many areas where coverage often comes up short or the board has perhaps not done their due diligence. Have your agent go through the options for consideration after reviewing your documents and seeing the

risk first-hand. This may even include providing at least a quote for coverage that perhaps you'd want to poll your owners on for interest periodically, such as earthquake insurance. Be wary of going with limits of liability insurance that are too low or, dare I say it, going without fiduciary coverage for your association's funds or directors and officers coverage. This does happen sometimes because the association's documents are sometimes silent with respect to insurance for these exposures.

When reviewing your insurance program, consideration should be given to the exposures the association has elected to retain, including the policy deductibles. Do you budget for a deductible or a retained loss? Assuming an 'all-in' condominium association policy it is not uncommon for the documents to be amended to transfer the property deductible to only the owners of the damaged property under certain circumstances. By going this route associations have lowered their self-insured expense and benefitted the owners by quantifying their responsibility.

## Contractual

This is transfer of risk to another party under a contract other than with insurance. While we would counsel you to pass your risk to contractors and service providers, rest assured their advisors are telling them to add some of their risk to your contractual woes! Have you read your contracts with your service providers or contractors? It is therefore imperative that you retain the services of your attorney to recommend appropriate indemnification and hold harmless language for any risk you are transferring and to protect you from the same. This is particularly important for contractors. You can potentially transfer the risk of damages to your property, employee injuries, third party injuries, construction cost overruns or delays, and a myriad of other minor considerations. Most of you are probably getting a certificate of insurance showing your association as an additional insured on the contractor's policy. This is the least you should do for any contractor regularly working on your property or that is performing a large project for you. However this still may not be enough in the event of a loss.

In closing, has your board performed a review of the risk transfer procedures and options you have in place? At some point you probably interviewed and hired trusted advisors to represent the association's interests, be it your attorney, insurance agent, or management firm. Utilize these resources to ensure that you are evaluating which risks to retain or transfer while being cost effective. It should also be noted that while risk transfer is important and prudent this should be done in unity with a risk management plan. Both will ultimately control your costs of risk. Again look to your trusted advisors to provide input. 



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