

Mapping the Insurance  
Defense & Covenant  
Enforcement Lawsuit:  
What Happens When  
You are Sued?

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# Before the journey begins. . .

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## Check your insurance!



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# Insurance For *Defending* Lawsuits

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- General Liability (CGL)
  - Accident or Occurrence Causing Bodily Injury or Property Damage (But not intentional acts)
  - Occurrence based (When did the accident occur?)
- Directors and Officers (D&O)
  - Wrongful Acts (But not Bodily Injury or Property Damage)
  - Claim based (When was the claim made?)
- Insurance pays for *Defense* not *Offense*!



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# What about Property Insurance?

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- Property Insurance does not apply to D&O or Liability claims, even if they involve the Association's Property
- Property insurance pays for damage to the Association's Property (i.e. fire, pipe bursting, etc. )



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# Did I bring all of my luggage?

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- Is It Covered by D&O?
  - Property Manager?
  - FHA and other “Discrimination” Claims?
  - Non Monetary Relief?
- Make sure all three are covered
  - Be sure to ask, these may be a separate “rider”



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You've been sued!



# Notify! Notify! Notify!

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- When Served with a lawsuit, IMMEDIATELY!
  - Notify Insurance
  - Notify Your Attorney
  - Start gathering information
- Which Policy covers? When In Doubt Notify All Insurance Companies!
- Only **30 days** to answer the Lawsuit



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# What is Covered?

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- Reservation of Rights
    - Defend *for Now*, and pay the legal fees and costs of the lawsuit.
    - Re-evaluate later and may or may not pay a judgment if the Association loses.
  - What about settlements?
  - Will the insurance co. pay to fix the problem that led to the Lawsuit (i.e. faulty drainage, broken pipes)???
- NO!**



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# Certain Kinds of Lawsuits

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- The Mirror Image Counterclaim
  - We say “take it down” they say “let it stay”
  - We say “pay up” they say “pay back”
- . . . And you’re ugly too!
  - Emotional distress, slander of title, legal fees, general damages.



# A Stress-free Trip Requires Advanced Planning

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## The Best Defense is a Good Offense for D & O Claims

- Make Sure You've Done Your Research
  - Check your maps (Declaration)
  - Review Airfare, Train Schedules, Hotels (Governing Docs)
  - Talk to your travel agent (WNCW)
  - Discuss with your fellow travelers (Board)
- Finalize your Plans (and Stick to Them)
  - Follow your own procedures



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# Typical Delays: Lawsuits You Can and Should Expect

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Just Because You Get on the Right Train, Doesn't  
Mean There Won't Be A Strike

- Towing/Booting
- Suspending Utilities
- Denying Access to Common Elements



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# Check your Garmin: Alternate Routes and Avoiding Roadblocks

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## Communications with the Owner

- Get started on the right track
  - Provide all documents and rules
  - Notifications about new rules and regulations
- Decision to Enforce
  - Provide proper notices: Letters, E-mails, Phone Calls
  - Respond to owner concerns: Meetings/Hearings



# Stay On Course: Enforcing Your Covenants/Rules

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- MAKE SURE ACCOUNTS ARE ACCURATE AND UPDATED
- Think Defensively and Plan Ahead (Stickers, Notifications, Pictures)
- Maintain good records (names, times, dates, documents: plumbing bills, invoices)



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# The Perfect Storm: The Crossroads of D&O and Liability

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When a Board decision or action results in property damage or personal injury.



# Defending Common Element Claims: Before You Start Your Journey

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- Maintenance and Repair Obligations
  - Do you know what they are?
- Records for Maintenance, Repairs, Replacement, and Construction
- Communications
  - Phone calls, e-mails, letters, meetings, newsletters



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The logo consists of three blue squares arranged in a triangular pattern, with the top square slightly offset to the right.

# Typical Travel Nightmares a.k.a. Typical Owner Complaints

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- Lack of Maintenance
- Failure to Repair or Replace
- Premises Liability



# Getting Sick or Lost = Claim By Owner

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- Owner Notifies Association of Damage
  - Letter, Call, or Lawsuit
- Notify Insurance Carrier
  - IMMEDIATELY
- Contact Attorney



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# Mapping Your Defense

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- Gather Documents
- Identify Witnesses
- Consider Experts
- Depositions
- Mediation
- Summary Judgment
- Trial



# Safety Tips for Your Journey

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- Understand Insurance Coverage and Exceptions – Every Claim is Not Covered
- Maintain Good Records
- Take Claims Seriously
- Don't Rely On Exculpatory Clause
- Attorney-Client Privilege



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# Travel Tip

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- Cover your Tail. . . Literally
- When Changing D&O companies, purchase tail insurance



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The logo consists of a stylized 'W' and 'C' intertwined, with a blue and black geometric design.

# Fringe Benefits

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- Will your Insurance Company Appoint WNCW?
  - Can save your association and the insurance company money, especially in the mirror image lawsuits
  - You get to keep your attorney
- Community Association Underwriters (CAU)
- United States Liability Insurance Co. (USLI)
- Great American Insurance Co.
- CNA
- Travelers



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The logo consists of three stylized, overlapping geometric shapes in shades of blue and black, arranged in a triangular pattern.

# Thank you!



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