

Insurance Claims: Proper Submission

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For those of you who have been involved in managing or sitting on a board of directors for a community association, you are aware that the association typically makes an insurance claim through its insurance agent. For many years, this has been an acceptable method for submission of insurance claims; however, there are pitfalls to making the claim directly to the insurance agent which could result in denial of an insurance claim or the insurance claim never being received by the insurance company. Here are some suggestions on how to properly tender an insurance claim to an insurance company.

Read the policy

We stress time and time again the importance of the association manager or board of directors obtaining the actual insurance policy. It is important to review the insurance policy not only for coverage issues, but also for claim submission information. Many insurance policies dictate how the insurance tender should be handled. Many of those policies require that the notice be sent to a specific corporate address. Most associations rely on the insurance agent to submit the claim to the corporate office of the insurance company; the burden, however, rests on the party making the claim to make certain it is properly tendered to the claims office.

Put the claim in writing

Associations will frequently call the agent to report a claim by telephone without following up in writing with the agent or the corporate office for the insurance company. All claims or notices of a claim must be submitted in writing. That is not to say that a telephone call to an agent or an adjuster to get a claim moving is inappropriate. However, those discussions must be confirmed in a letter describing the claim. In the letter, it is imperative that you address the substance of the claim, identify the policy number and the policy period in which you are tendering the claim. That letter should be sent by certified mail, return receipt requested, and first class mail to the appropriate parties.

Timely submit claims

It is important that you submit a claim as soon as you have notice of a claim or a circumstance that could result in a claim. Untimely reporting can result in denial of your claim by the insurance company. Many insurance companies have a claim reporting period and the failure to submit a claim within the claim reporting period could result in the denial of the claim.

Tender the claim under all applicable policies

There may be more than one policy that covers your claim. Speak to your insurance agent about insurers to which the claim should be tendered. If necessary, consult legal counsel. Again, failure to timely report a claim to a previous insurance company could bar coverage for that claim in the future. Don't overlook the fact that coverage may be triggered under previous policies.

Don't overlook tendering small claims actions

When an association or its officers or directors are defendants in a small claims action, that claim should be tendered to the insurance company. At a minimum, the insurance company should be notified of the action. If the small claims court action later results in a larger, related claim against the association but the original small claims action was not tendered or the insurance company was not notified of the claim, you run the risk that the insurance company may deny coverage of the later-filed claim on the grounds it was not notified of the earlier claim.

Consider notifying the insurance company of requests for Alternative Dispute Resolution

In some cases, an owner must offer an association Alternative Dispute Resolution (ADR) (and vice versa) before suing. The association should tender the claim as soon as the ADR letter comes in. Many insurance companies will pay for the defense of an ADR proceeding. The insurance company's rationale in providing a defense is that if it can dispose of a claim through mediation or arbitration, then the ADR process is preferable to lengthy litigation with the claimant. We recommend that you also consult with legal counsel to determine if Internal Dispute Resolution (IDR) matters should be reported.

Should you tender claims when you know there is no coverage or the amount is less than the deductible?

It is always important that the insurance company be informed about a potential claim. Remember: Claims that start off under the deductible amount, or in a form which happens to fall outside the scope of coverage, could turn into larger claims where coverage is afforded. For example, there may be an exclusion in an insurance policy for coverage for a mold related claim. If the association does not tender the claim or put the insurance company on notice and, later, the homeowner claims discrimination because the association did not treat them fairly (assuming that is a covered claim), the insurance company may deny the claim based upon untimely notice. The rules vary from policy to policy regarding this issue. We strongly advise the association to consult with legal counsel when in doubt and err on the side of caution. Consulting with your insurance agent in these matters is important. But confirm the information that you have discussed with your insurance agent with an attorney as an added measure of your due diligence.

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Who can tender an insurance claim?

The insured or anybody who has a right under the policy may tender a claim. Depending on the nature of the association's policy, an owner may be able to make a claim against the association's policy. However, the board should encourage owners to make their claims directly through the association so the association may assess the claim and be given the opportunity to discuss the merits of the claim with the insurance adjuster and legal counsel, if appropriate.

The loss of insurance coverage can be devastating to an association. Remember that an insurance policy is nothing more than a contract between the insurance company and the insured. It will be interpreted according to contract law. If you fail to comply with any express terms regarding claim tenders, you may provide the insurance company with a viable reason for denying a claim. When in doubt, tender early and often.