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Bulletin for Board Members

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The Importance of Verifying Third-Party Vendors' Insurance for Homeowners Associations

Homeowners Associations (HOAs) play a crucial role in maintaining the quality of life in communities. A significant part of this responsibility involves managing relationships with third-party vendors who provide essential services, such as landscaping, maintenance, security, and more. One of the most critical steps an HOA can take is to verify that these vendors carry adequate insurance coverage. This article will explore the importance of this practice and the potential risks involved when it is overlooked.

Understanding Vendor Insurance

Third-party vendor insurance typically includes several key types of coverage, such as:

1. **General Liability Insurance:** This protects against claims of bodily injury or property damage that may occur while the vendor is working on HOA property.
2. **Worker's Compensation Insurance:** This provides benefits to employees of the vendor who are injured on the job, preventing the HOA from being held liable for workplace injuries.
3. **Automobile Liability Insurance:** This covers any incidents involving vehicles used by the vendor while conducting business for the HOA.
4. **Professional Liability Insurance:** If a vendor provides professional services (e.g., management, consulting), this coverage protects against claims of negligence or inadequate performance.
5. **Riders:** A rider adds to or amends the terms of the insurance policy. For example, many cyber insurance policies are offered as riders on general liability policies. These riders provide additional coverage for cyber losses, which is increasingly important in today's digital landscape. It's crucial for HOAs to read riders carefully to understand the specific terms and conditions related to cyber incidents or any other coverage the rider pertains to.

Continued on page 2 ...

The Importance of Verifying Third-Party Vendors' Insurance
Page 1

Preparing to Borrow for Major Projects
Page 3

CAI Files Lawsuit Against the U.S. Department of Treasury
Page 4

How HOAs Can Handle Election Solicitations?
Page 5

HOAMCO®

The Importance of Verifying Third-Party Vendors' Insurance ...

Continued from previous page

Why Verifying Insurance is Essential

1. **Risk Mitigation:** By ensuring that vendors have adequate insurance, HOAs can significantly reduce their exposure to liability. If a vendor is not insured and an incident occurs, the HOA may be held responsible for any damages or injuries, leading to potentially costly legal battles and settlements.
2. **Protecting Community Assets:** HOAs manage valuable community assets, including common areas, recreational facilities, and landscaping. If a vendor damages these assets while working, having verified insurance ensures that the costs for repairs or replacements can be covered without financial strain on the HOA.
3. **Encouraging Accountability:** Vendors with proper insurance coverage tend to operate with a greater sense of accountability. They are more likely to adhere to industry standards and safety protocols, knowing that their insurance will be affected by any claims made against them.
4. **Compliance with Regulations:** In some states or municipalities, specific insurance requirements may be mandated for vendors working in HOA communities. Verifying insurance helps ensure compliance with these legal obligations, preventing potential fines or legal complications.
5. **Building Trust with Residents:** An HOA that takes proactive steps to verify vendor insurance demonstrates its commitment to protecting the community. This can enhance trust and confidence among residents, who may feel more secure knowing that the HOA is managing risks effectively.
6. **Long-Term Cost Savings:** Although verifying insurance may require additional administrative effort, it can lead to long-term savings. By avoiding potential legal disputes and financial liabilities, HOAs can allocate their budgets more effectively toward community improvements and maintenance.

Best Practices for Verifying Vendor Insurance

1. **Request Certificates of Insurance (COI):** Always request a COI from vendors before they begin work. This document provides proof of insurance coverage and details the types of coverage and policy limits.
2. **Review Coverage Limits:** Ensure that the vendor's coverage limits are adequate for the services they will provide. For example, higher-risk activities may require higher liability coverage.
3. **Check for Additional Insured Status:** HOAs should request to be added as an "additional insured" on the vendor's insurance policy. This extends the vendor's coverage to include the HOA, offering further protection.
4. **Maintain Records:** Keep organized records of all vendor insurance documents for easy access. This practice is essential for compliance and can be useful during audits or legal inquiries.
5. **Regular Updates:** Establish a system for periodically reviewing and renewing insurance verification. This ensures that coverage remains current and compliant with any changes in state regulations or HOA requirements.

Conclusion

Verifying third-party vendors' insurance is a vital responsibility for HOAs that helps mitigate risks, protect community assets, and foster trust among residents. By implementing best practices for insurance verification, HOAs can safeguard their communities against potential liabilities and ensure a more secure environment for all residents. Taking these proactive steps not only enhances operational efficiency but also strengthens the HOA's reputation as a responsible and diligent governing body. Understanding the nuances of insurance policies, including riders, further equips HOAs to make informed decisions and protect their communities effectively.

Preparing to Borrow for Major Projects

What Homeowner Associations Should Know

by Alliance Association Bank, a division of Western Alliance Bank

In the rapidly growing community management space, HOAs are responsible for a wide range of projects to maintain and improve the communities they serve. From routine maintenance to large-scale initiatives aimed at enhancing property values and resident satisfaction, each project needs a financial plan as well as a logistical one.

Budgeting for community associations requires a blend of day-to-day planning and long-term preparation. Regular homeowner fees typically cover routine maintenance and other essential operational costs, while reserves can be a healthy backstop for future project expenses. Larger-scale improvements, repairs, or capital maintenance may look daunting, and may or may not have been planned for or outlined in a capital maintenance plan or reserve study. When facing larger-ticket items (either expected or unexpected), financing may be an essential tool to keep the community on the right track.

How do you know what projects can be financed and what a bank wants to know before it extends a loan? Read on to find out.

What projects can a loan finance?

Examples of projects that can typically be financed with a loan include:

- Exterior repairs such as façade restoration, siding and masonry work
- Roof repair and replacement
- Risers and chillers
- Window replacements
- Balconies and decks
- Elevators
- Boilers
- Asphalt

What approval criteria does a bank consider?

Most banks evaluate several criteria when considering if an association loan is feasible for any given community. Some of these include:

1. **Delinquencies.** In a healthy community, homeowners are current on their HOA fees. To qualify for a loan, no more than 10% of the community's units can have delinquencies of assessments and any current special assessments older than 60 days. This does not include items like fees, fines, or other non-assessment related charges.
2. **Balance sheet.** The HOA will have a minimum of 20% of its regular annual assessments on its balance sheet as cash This includes operating, reserves, time deposits, and any other ancillary cash funds.
3. **Community size.** It can be trickier for small communities to repay loans. Alliance Association Bank requires a minimum of 25 units for project financing.
4. **Loan amount.** Most lenders will enforce a minimum loan amount of $100,000 or more.
5. **Owner mix.** For a community to qualify for a loan, at least 60% of the units should be owner-occupied, with less than 10% owned by one entity or person. In newer communities, developers commonly still own units. In these cases, there are ways to carve out developer units so that an association can still qualify for financing.

Alliance Association Bank is devoted exclusively to the rapidly growing HOA and community association industry. Our team partners with community management companies nationwide to provide industry-leading banking and technology solutions. You'll work with lending and banking relationship managers who specialize in association lending. To learn how we can assist you, connect with one of our experienced bankers today.

Community Associations Institute Files Lawsuit Against the U.S. Department of Treasury

On September 10, 2024, **Community Associations Institute** filed a lawsuit against the United States Department of Treasury challenging the application of the Corporate Transparency Act beneficial ownership interest filing requirements on community associations.

After extensive efforts to work with the U.S. Department of the Treasury and the Financial Crimes Enforcement Network and to lobby for the securing of an exemption, CAI filed a lawsuit against the Treasury Department.

The lawsuit challenges the application of the CTA to community associations and highlights several key issues:

1. **Exemption from the Corporate Transparency Act:** Communities should be exempt from the act's reporting requirements, as they are considered nonprofit organizations under section 528 of the IRS code.
2. **Improper Rulemaking Procedures:** FinCEN issued FAQs without following proper notice-and-comment procedures required by the Administrative Procedure Act, making these rules invalid.
3. **Arbitrary and Capricious Action:** FinCEN's refusal to exempt community associations from the CTA is arbitrary and capricious, as it fails to consider the low risk of illicit financial activity by such entities.
4. **Constitutional Violations:** The act violates communities' constitutional rights under the Fourth, Fifth, and Ninth Amendments by requiring invasive personal disclosures without adequate privacy protections or sufficient cause.
5. **Overreach of Federal Powers:** The act unlawfully usurps state authority to regulate corporate formation and governance, exceeding the federal government's constitutional powers.
6. **Equal Protection Violation:** The act discriminates against community associations by not exempting them as nonprofit organizations, unlike similar entities under section 501(c) of the IRS code.

To protect our members, CAI seeks a judicial review of our exemption request and asks the court to declare the act inapplicable to community associations. Alongside this, CAI has filed for a preliminary injunction to halt the application of the act until a final court ruling is made.

The Corporate Transparency Act deadline for compliance of January 1, 2025 remains and community associations should be prepared to file. For more information and to stay informed, visit www.caionline.org/cta.

How Can HOAs Handle Election Solicitations?

What's a good policy regarding election solicitations? What are the guidelines for board candidates to distribute pamphlets and other materials?

It's very common for community associations to impose blanket bans on solicitations such as the distribution of flyers door to door. However, special free-speech related considerations may apply in the case of community association and public elections.

In Dublirer v. 2000 Linwood Ave. Owners Inc., the Supreme Court of New Jersey determined a community association cannot unreasonably restrict First Amendment activities of owners in connection with a board election. In that case, the cooperative corporation prevented a candidate from distributing written materials under doors and essentially limited candidates to mailing materials to fellow residents, posting on a bulletin board, and personally distributing materials at the annual meeting.

Associations should consult with their attorneys regarding the impact restrictions on political expressional activities may have on community associations.

The court developed a test that focused on the purpose of the expressional activity in relation to the property's use. The court struck down the house rule as applied to a board election and determined that while a "board can adopt reasonable time, place, and manner restrictions to serve the community's interest," such restrictions must be narrowly tailored to serve important goals; sufficient avenues of expression also must be preserved.

The Dublirer case and other prior cases determined a blanket prohibition against the display of political signs in support of candidates for public office violated the New Jersey Constitution. In certain circumstances, community associations must permit door-to-door solicitation and campaigning in public elections, such as when the association only permits candidates from one party to campaign or when the association comprises a significant portion of the municipality's population.

The New Jersey cases are premised upon the free speech clause of the New Jersey Constitution, which provides broader protections than those guaranteed by the First Amendment. The state constitution not only protects against governmental restrictions on free speech but also "protects against unreasonably restrictive or oppressive conduct on the part of private entities in certain circumstances."

Associations should consult with their attorneys regarding the impact restrictions on political expressional activities may have on community associations. Several states have adopted laws permitting residents of community associations to display political signs, certain flags, and other items such as ribbons in support of troops.