

THE UCOM PRESS

Summer 2024

• UCOM 50th Anniversary

UCOM 50th Anniversary Conference

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By: Sidney McBride

• What are the duties of the Insurance Carrier?

Board Member

• Importance of updating documents

If you missed the recent 2024 UCOM training conference—you missed a lot. Nearly 100 attendees representing over 55 associations participated in the full day program on Friday, April 26, 2024 at the San Marino Club in Troy MI.

• So you want to be on the Board of Directors?

• Electric Vehicle Information

• Workers Comp Insurance

• Power of Education!

Aside from condo/HOA board members and

management company representatives, numerous vendors were present to offer valuable hints, information and suggestions on an array of professional services such as legal, property management, insurance coverage, property/ preventative maintenance, plumbing, masonry, roofing and others.

“UCOM is such a great resource to our board and community and we appreciate the value of what is offered.”

-David Shores

Presentations by area experts covered topics pertaining to adequate operating budgets and reserve funding for associations; addressing owner delinquencies and rule violations; bylaw revisions and enforcement; condo minutes and document retention; common area maintenance and capital needs; new legislation and regulations, and much, much more.

“UCOM has helped our board gain a better understanding of the new laws that are taking place as well as to provide insight as to how to be better volunteers as board members.”

-Lisa Galovich

Several lucky attendees received prizes that were donated by several of the participating vendors. The prizes were raffled off during the event.

Special thanks is extended to the 4 attorney presenters (Jeff Vollmer, Tracey Danner-Bond, Steven Sowell and Robert Meisner); 15 registered vendors, 6 featured sponsors, and especially those condo/HOA representatives who attended and continue to support UCOM programs.

The next event is slated for Fall 2024. Be sure to stay tuned to the UCOM website at www.ucomonline.org for upcoming events and announcements.



Insurance -What are the duties of the Insurance Carrier?

Distributed by: Wendy Sherman -Board Member

Every insurance contract imposes two separate duties on an insurance carrier, the duty to defend and the duty to indemnify. The duty to defend requires an insurance carrier to pay for an attorney to defend a claim that may potentially be covered under the insurance policy. The Michigan Court of Appeals has explained the duty to defend as follows:

The duty of the insurer to defend the insured depends upon the allegations in the complaint of the third party in his or her action against the insured. This duty is not limited to meritorious suits and may even extend to actions which are groundless, false, or fraudulent, so long as the allegations against the insured even arguably come within the policy coverage. An insurer has a duty to defend, despite theories of liability asserted against any insured which are not covered under the policy, if there are any theories of recovery that fall within the policy. The duty to defend cannot be limited by the precise language of the pleadings. The insurer has the duty to look behind the third party's allegations to analyze whether coverage is possible. In a case of doubt as to whether or not the complaint against the insured alleges a liability of the insurer under the policy, the doubt must be resolved in the insured's favor.

Citizens Ins Co v Secura Ins, 279 Mich App 69, 74–75; 755 NW2d 563 (2008).

Accordingly, the duty to defend is extremely broad and, if a claim, or any part of a claim, could potentially be covered under an insurance policy, the insurance company must provide a defense; however, if the claim clearly falls within an exception under an insurance policy, the insurance company is not required to provide a defense and it may deny the claim.

The duty to indemnify requires an insurance carrier to pay a loss under an insurance policy, such as a judgment, so long as the loss is covered by the insurance policy and within policy limits. Similarly, if there is no lawsuit pending, the duty to indemnify is only triggered if there is a covered loss under an insurance policy. Accordingly, unlike the duty to defend, in order for the duty to indemnify to be triggered, the claim must be covered by the insurance policy, as opposed to arguably be covered by the insurance policy. As such, the duty to indemnify is narrower than the duty to defend.

Insurance Requirements for Condominium Associations

A condominium association is required to have general liability insurance to cover damage to person or property. MCL 559.156 of the Michigan Condominium Act also states, in pertinent part, that a condominium association's bylaws may contain provisions "for insuring the co-owners against risk affecting the condominium project, with prejudice to the right of each co-owner to insure his condominium unit or condominium units on his own account and for his own benefit." Mich. Admin. Rule 559.508 addresses a condominium association's requirement to carry insurance and states as follows:

The bylaws shall provide that the association of co-owners shall carry insurance for fire and extended coverage, vandalism and malicious mischief, and, if applicable, liability and workers' disability compensation, pertinent to the ownership, use, and maintenance of the premises and that all premiums for insurance carried by the association shall be an expense of administration. The association may carry other insurance coverage, including cross-coverage for damages done by 1 co-owner to another.

The insurance requirements for a condominium project are largely dictated by the master deed and condominium bylaws. In addition to the mandatory property insurance coverage, most condominium documents will also require one or more of the following types of insurance coverage:

General Liability Insurance

Property Insurance

Directors and Officers Insurance

Crime & Fidelity Insurance

Cyber Insurance

Worker's Compensation Insurance

Homeowners Insurance (maintained by individual owners)

Depending on the type of condominium project being insured and the language of the condominium documents, the association and co-owners will have different insurance requirements, both in terms of policy limits and coverage.

Insurance Requirements for Homeowners Associations

In the context of homeowners associations, there are no laws that require a homeowners association to carry insurance because Michigan does not have a statute governing homeowners associations. Accordingly, the insurance requirements, if any, in a homeowners association are dictated by the governing documents. Generally speaking, homeowners associations will have similar types of insurance as outlined above; however, homeowners associations that are composed of single-family homes, as opposed to attached units, will typically have less insurance responsibilities under the governing documents because there are typically fewer common areas to insure.

Courtesy of Hirzel's Handbook, How to operate a Michigan Condo or HOA by Kevin Hirzel, ESQ.

Importance of Updating Documents

By: Cindy Locke- Board member

It is important that Associations update their bylaws periodically to keep up with current Michigan Statutes. Most bylaws also need strong Rules and Regulations to support actions taken by the Board that may not be explicit and left to interpretation. For instance, detached condominiums may require co-owners to replace a tree on their front lawn, if and when it dies, at their expense since they control their own sprinkling system. I can guarantee you that some co-owners will plant the smallest and least expensive one they can find. The Rules and Regulations could specify it be at least five to six feet tall. They could also list acceptable trees that may be planted. Most bylaws require that co-owners submit a modification request for anything co-owners do that can be seen by another co-owner already. What if a co-owner plants a tree that is only three and a half feet tall (without approval)? Should they be required to remove it and plant one in compliance with the Rules and Regulations? Of course they should. Some board members may be tempted to let it go to avoid any confrontation. The problem is they are trading one problem for another one. In keeping the co-owner happy who has broken the rules, there could be many disgruntled co-owners who are not pleased with what that does aesthetically to the rest of the complex. What seems easy at the time may not be so easy after all. Having the Rules and Regulations as backup helps the Board of Directors make better decisions. Directors should always follow their own documents. In the long run, that is the best path.

So, you want to be on the Board of Directors?

By: Clara Sumeghy– Board Member

Do you know the basic duties of Condominium Directors and Officers?

1. Duty of Loyalty:

This duty requires an undivided and unselfish loyalty to the association. It demands that there is no conflict between one's duty to the association and self-interest. Directors and Officers are required to refrain from engaging in personal activities which could injure or take advantage of the association.

2. Duty of Diligence:

Directors and Officers must act with the care of reasonably prudent person. They must perform their duties in good faith and in a manner, they reasonably believe to be in the best interests of the condominium association.

3. Duty of Obedience:

Directors and Officers are required to perform their duties in accordance with applicable statutes and the terms and bylaws of the association.

Directors and Officers should have a basic knowledge and understanding of running a business. The association is comprised of various segments including personnel, house-keeping, maintenance, rules & regulations, and the governance documents. This is not a job for learning on the go.

All Directors and Officers should be required to sign the association's Conflict of Interest Personal disclaimer and shall disclose any conflicts of interest or interests they have in transactions or matters coming before them during their tenure on the Board of Directors in accordance with the Association's Rules and Regulations pertaining to such matters as are adopted.

Electric Vehicle Information

By: Cindy Locke– Board Member

One of the benefits of belonging to UCOM is the knowledge and information passed along to its members. One of our recent mini-seminars was on the future of electric vehicles and electric vehicle charging stations. The automobile companies are aggressively producing plug-in electric vehicles that will become more in demand in the near future. The State of Michigan does not currently regulate the installation of electric vehicle charging stations. As they become more popular, co-owners may want to install their own charging stations. Associations need to be prepared ahead of time so they can make appropriate decisions when that time comes. They need to consider the type of equipment the co-owner is requesting, the plans and specifications, and the credentials of the installer. Also, the size and color of the charging stations and where they will be allowed to attach them on the unit, so as not to detract from the aesthetics of the condominiums. The Association should also have these plans reviewed by their own experts. If the Association does give approval for this modification, they should prepare an agreement between the Association and the co-owner. This agreement should assign responsibility for all costs, insurance, and damages to the co-owner and have it recorded. At this time, Associations are not required to approve a co-owner's modification request for an EV charging station. Nevertheless, as we go "green" and production increases on electric vehicles, Associations may be compelled to consider it in the near future. It is best to have a plan in place beforehand.

When I brought this information back to the Board members that were unable to attend this seminar, they found it to be very informative. In fact, our manager asked for a copy to pass along to the management company. Though our goal at UCOM is mainly to educate and support directors, the knowledge we receive is also very useful to many managers and management companies as well. New information is a win, win, for everyone.

Workers' Compensation Insurance

Distributed by: Wendy Sherman– Board Member

Workers' compensation insurance provides coverage for an employee if they are hurt or injured in work-related accidents. In Michigan, an employer is required to carry workers' compensation insurance if it regularly employed one or more employees for at least 35 hours a week for at least 13 weeks during the last year or an employer has more than three employees at any time. In other cases, a community association's governing documents require it to carry workers' compensation insurance. Generally speaking, a worker's compensation insurance policy will cover the following types of work-related injuries:

Replacement wages

Medical expenses

Death benefits

Even if an association is not required to carry workers' compensation insurance because it has no employees, many community associations will still carry a workers' compensation policy for additional liability protection. First, certain types of workers' compensation insurance policies will provide coverage to directors, officers, or volunteers. Accordingly, if your association has volunteers that help with landscaping or perform any type of maintenance and they are injured while engaged in these activities, a workers' compensation policy may provide coverage. Second, an association may hire an uninsured co-owner to provide maintenance, fail to check the insurance of a contractor, or be unaware that a contractor has failed to pay their workers' compensation insurance or let a policy lapse. If the association had some degree of control over the activity that caused an injury, the injured party may attempt to argue that the association was an employer and entitled to worker's compensation benefits.

Finally, in addition to liability issues, there are significant penalties in Michigan if an employer fails to carry workers' compensation insurance. Specifically, an employer may be subject to a fine of \$1000 or imprisonment for no less than 30 days or more than six months, or both, if a court determines that an employer failed to carry workers' compensation insurance and was legally required to do so. Each day that an employer fails to carry workers' compensation insurance is a separate offense. Accordingly, if an association does not have workers' compensation insurance and forgets to obtain a policy after hiring its first employee, or it is later determined that the association was in fact an employer, even if it did not believe it had entered into an employment relationship with a particular individual, the association and directors could be subject to significant penalties. Given that workers' compensation insurance is relatively inexpensive, it is a best practice for community associations to carry a workers' compensation policy, even if they are not legally required to do so.

Courtesy of Hirzel's Handbook , How to operate a Michigan Condo or HOA by Kevin Hirzel, ESQ.

Spreading the Power of Education!

By Dawn Miller– President

UCOM is an organization that educates Condominium Association Board of Directors and Management Companies and navigates them through their volunteer positions and careers so that they can best contribute to their communities! Our roles are constantly evolving as to how we can best service the communities that we work so hard to help operate. Therefore, if we can gain professional insight when opportunities arise, it only makes our contribution better and more efficient. We are all faced with new personalities, different issues and obstacles while working with one another on how to best solve problems, all while trying our best to accomplish the goals that are needed for our communities, Through its educational philosophy UCOM's goal is to help you get "better" at understanding the complexity of your roles and we hope that you continue to see the value of our mission and share with other members on boards so that they can be "better" too.

Reminder: UCOM Shifts to eCommunications

Please note that UCOM is now using various electronic communication methods to conserve costs and manpower over direct mailings. UCOM Electronic communications will be in the form of email and text to registered contacts, UCOM website at www.UCOMonline.org and UCOM's Social Media accounts on Facebook, Instagram and TikTok. Be sure your association or business entity has provided a reliable contact name, email and cell number to ensure you receive timely UCOM notifications. Email any updates to us at info@ucomonline.org

We wish everyone a safe and wonderful Summer! Stay tuned for information regarding our next Mini– Seminar and further Zoom Vendor Sessions!

Sincerely,

Your UCOM Board of Directors