



## INCREASED LITIGATION AGAINST BOARDS: ARE YOUR DIRECTORS COVERED?

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COLLABORATIVE INSURANCE SOLUTIONS, LLC



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# Increased Litigation Against Boards

## Are Your Directors Covered?

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3



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Valentine Feeney is a property & casualty insurance advisor specializing in risk management for community associations, real estate portfolios, and construction firms across New England. With over a decade of experience guiding condo boards, property managers, and business owners through complex insurance markets, Val is known for his practical approach to streamlining insurance programs.

4

# Agenda

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## Increased Litigation Against Boards Are Your Directors Covered?

- The Surge in Litigation — What's Really Behind It
- Drivers and Decisions Putting Boards at Risk
- The Stakes — How Directors Get Pulled In
- Insurance Landscape — What's Changing in Coverage
- Proactive Steps — How Boards Can Stay Protected

5

# First: Why This Matters

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## ▪ Volunteer Directors Often Unaware of Personal Exposure

Most board members join to help their community, not realizing their personal assets can be at risk. Many assume the association's policy automatically protects them until they're named individually in a lawsuit.

## ▪ Boards Face Heightened Legal Risk

Post-Surfside, every decision from maintenance, budget, reserve funding, is being second-guessed through a legal lens. What used to be a neighborly disagreement now escalates into a claim of "breach of fiduciary duty."

## ▪ Condo Living = High Emotional + Financial Stakes

When someone's condo/biggest investment is on the line, emotions run hot. A simple dispute about leaks, parking, or assessments can turn adversarial quickly. And directors, even those acting in good faith, often end up in the crossfire.

6

## The Litigation Surge: What's Happening



Lawsuits Against Condo Boards Are Rising

- Post-Surfside, lawsuits against boards have more than doubled in some markets.
- Claims now often name individual directors, not just the association.
- Plaintiffs' attorneys are targeting "breach of fiduciary duty" and failure to maintain reserves as go-to allegations.
- Insurance carriers are responding by raising deductibles and tightening D&O terms.

7

## Real-World Examples

- **Surfside, FL (2021)**
  - Tragedy led to more than 20 lawsuits alleging deferred maintenance and poor oversight.
  - \$1B+ settlement.
  - Sparked national regulatory reform and new reserve study laws.
- **Boston Suburban Condo (2023)**
  - Short-Term Rental Enforcement (Governance / Discrimination Claim)
  - The board implemented a bylaw restricting short-term rentals to preserve safety and quiet enjoyment.
  - An owner challenged the rule, alleging it was selectively enforced and discriminatory against non-resident owners.
  - The claim escalated to a Fair Housing complaint, with legal fees exceeding \$75,000 before settlement.
- **Cape Cod Association (2024)**
  - The board hired a roofing contractor to replace several building roofs. After the project, multiple owners reported leaks. The board withheld final payment, leading the contractor to file suit for breach of contract and defamation.
  - The association's D&O policy responded for defense, but the contractual liability exclusion narrowed coverage, leaving some costs uncovered.

8

## Quick Audience Poll

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- Raise of hands:
  - How many here are current or former board members?
  - Have you seen legal threats in board meetings?
  - Has your board received an attorney letter in the last two years?
  - Who here knows whether their D&O covers past board members?

9

## What's Driving the Surge?

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- Why Are We Seeing So Many More Board Lawsuits?
  - Governance practices
  - Maintenance & reserves
  - Owner dynamics
  - Regulatory compliance

10

## Governance Practices

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- Lack of transparency fuels distrust and legal action.
- Decisions made informally or undocumented = perception of secrecy.
- Poor recordkeeping and meeting minutes hinder defense when disputes arise.
- Financial oversight and reserve decisions now under microscope post-Surfside.
- **Mini Case:**
  - *A 50-unit suburban condo delayed a capital project due to budget pushback. When leaks developed, owners claimed the board ignored engineer advice. The lawsuit hinged on missing meeting minutes that would have shown the board acted in good faith trying to do right by all.*
- **Insurance Implication:**
  - D&O coverage often hinges on documentation. Without proper records, insurers have less defense leverage and settlements rise.

11

## What Good Governance Looks Like

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- **Board Process & Transparency**
  - Board decisions are documented in minutes with clear rationale.
  - Minutes are approved promptly and archived for at least seven years.
  - Major votes and financial approvals are recorded formally.
- **Financial Oversight**
  - Budgets and reserves reviewed with management before adoption.
  - Two bids required for major contracts or projects.
  - Monthly or quarterly financial reports reviewed by treasurer and manager.
- **Policy & Procedure**
  - Conflict of Interest and Board Code of Conduct in place.
  - Document retention policy maintained.
  - Board governs, manager executes — no role overlap.
- **Owner Engagement**
  - Agendas published in advance when feasible.
  - Executive sessions used only for legal/personnel issues.
  - Owner concerns are logged and responded to in writing.

12

## Maintenance & Reserves

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- Deferred maintenance is the #1 spark for post-Surfside claims.
- Boards that keep assessments artificially low expose themselves to “failure to act” suits.
- Inadequate reserve funding now triggers not only legal risk but insurance underwriting scrutiny.
- Maintenance plans show diligence — lack thereof implies negligence.
- **Mini Case:**
  - *A coastal condo postponed façade repairs for years. When a section of masonry fell, the insurer covered physical damage, but the D&O claim over delayed action hit a separate policy with a higher deductible.*
- **Insurance Implication:**
  - Insurers now require updated reserve studies and engineering reports before renewal. Boards without them may face coverage restrictions or higher deductibles.

13

## What Good Maintenance & Reserves Looks Like

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- **Planning & Documentation**
  - Reserve study updated every 3–5 years and referenced in budgets.
  - Preventive maintenance plan created and followed annually.
  - Large capital projects tracked in a multi-year plan with funding schedule.
- **Execution & Accountability**
  - Work orders tracked by manager and reported to board monthly.
  - Maintenance logs and vendor invoices retained with property files.
  - Independent engineering reports obtained for major systems every few years.
- **Financial Readiness**
  - Boards budget realistically, not politically, and assessments align with true costs.
  - Reserve transfers made consistently and documented in meeting minutes.
  - Special assessments communicated transparently with owners.
- **Insurance Alignment**
  - Broker informed of any major improvement or system change.
  - Property limits reviewed annually with recent construction updates factored in.

14

## Owner Dynamics

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- Owners are more litigious and informed, with social media amplifying conflicts.
- Allegations of selective enforcement and discrimination are common.
- “Problem owners” can easily mobilize others and file group claims.
- Emotions often turn management issues into legal ones.
- **Mini Case:**
  - *A board in southern MA enforced a pet policy on one owner but overlooked others. The owner filed a Fair Housing discrimination claim and posted board emails online. The insurer defended but the claim led to \$60K in legal fees and board resignations.*
- **Insurance Implication:**
  - D&O covers wrongful acts, not “hurt feelings.” Training boards on consistent enforcement reduces both claim frequency and premium load.

15

## What Good Owner Dynamics Looks Like

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- **Consistent Enforcement**
  - Rules applied equally and consistently across all owners.
  - Violation notices documented with dates and photos (if applicable).
  - Appeal or hearing process offered and recorded.
- **Communication**
  - Regular owner updates after each board meeting.
  - Annual “State of the Association” letter summarizing finances and projects.
  - Dedicated email or portal for logging owner issues — tracked by management.
- **Conflict Management**
  - Early mediation or manager involvement before escalation.
  - Board refrains from responding emotionally or informally via email chains.
  - All complaints and responses logged for reference if a claim arises.
- **Community Culture**
  - Encourage participation through committees or surveys.
  - Directors emphasize that rules are for fairness, not control.

16

## Regulatory Compliance

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- Boards are now considered employers, landlords, and corporations all at once.
- Common exposure areas: Fair Housing, ADA accessibility, employment disputes, environmental regulations.
- Volunteer boards rarely receive compliance training, yet are legally accountable.
- State reserve and building safety laws (post-Surfside) are expanding obligations.
- **Mini Case:**
  - *A Cape association faced an employment-related claim from a maintenance worker alleging wrongful termination. The board assumed D&O covered it, but it required separate EPLI coverage, which they didn't carry.*
- **Insurance Implication:**
  - D&O is not a catch-all. Associations with employees or vendors need EPLI and fidelity coverage to close the protection gap.

17

## What Good Regulatory Compliance Looks Like

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- **Legal Awareness**
  - Board members understand Fair Housing and ADA basics.
  - Employment Practices (EPLI) reviewed annually if staff employed.
  - Manager or counsel provides annual legal update summary.
- **Procedures & Documentation**
  - Board maintains written discrimination and accommodation policy.
  - Vendor contracts include indemnification and insurance requirements.
  - Staff and vendors trained on harassment and conduct policies.
- **Audit & Oversight**
  - Annual review of bylaws and rules with counsel or management.
  - Certificates of Insurance (COIs) verified for all vendors.
  - Incident reporting process documented and rehearsed.
- **Insurance & Risk Tie-In**
  - D&O reviewed for employment-related and regulatory coverage.
  - EPLI and Fidelity added where applicable.
  - Cyber coverage evaluated if collecting sensitive owner data

18

## The Stakes for Directors

### “Good Intentions Don’t Protect Personal Assets”

- Board members often assume the association’s insurance automatically shields them.
- D&O protects against wrongful acts, not bad outcomes.
- Legal defense alone can exceed \$75,000–\$150,000 even for dismissed cases.
- Without proper safeguards, directors’ personal savings and home equity may be exposed.



“Most of the people sitting on condo boards are trying to help their community. But when litigation hits, it’s their names, not just the association’s, that appear on the lawsuit.”

19

## Coverage Gap Reality Check

What Boards Think They’re Covered For vs. What They Actually Are

### What Boards Assume

“All legal action is covered.”

“Coverage includes all past board members.”

“Claims are covered as long as they happen during the policy year.”

“Defense costs are separate from limits.”

### What D&O Actually Covers

Claims alleging *wrongful acts* — e.g. breach of duty, mismanagement, discrimination.

Only if the policy specifically includes *prior acts* and *past directors*.

Only if *reported* within the policy’s reporting window.

Sometimes true, sometimes not — depends on policy form.

### What It Often Excludes

Contract disputes, fraud, bodily injury/property damage.

Directors who left before retroactive date often uncovered.

Late notice can void coverage entirely.

Defense can *erode* limits quickly, leaving little for settlement.

20

## The Market Today: Shifting

- Post-Surfside underwriting is far more rigorous, boards are now evaluated like small corporations.
- Carriers are requiring financial statements, reserve studies, and inspection reports before offering terms.
- Several major insurers have reduced appetite for older or underfunded properties.
- Premiums have stabilized modestly, but deductibles and exclusions have increased.
- The definition of “risk quality” has expanded: maintenance discipline, documentation, and management reputation all influence insurability.
- Associations that can demonstrate strong governance are securing better pricing and broader terms.

21

## D&O Deep Dive: What’s Covered and What’s Not

- **What It Covers:**
  - “Wrongful acts”- breach of duty, mismanagement, misrepresentation, or discrimination.
  - Defense costs and settlements (within policy limits).
  - Coverage for board members, officers, committee chairs, and sometimes property managers.
  - Some policies include prior acts - but only if continuous coverage has been maintained.
- **Common Exclusions:**
  - Bodily injury or property damage (that’s your GL policy).
  - Fraud, intentional misconduct, or criminal acts. (that’s your Crime policy)
  - Contract disputes and construction defects.
  - Claims reported late or arising before the retroactive date.
- **Red Flags to Watch:**
  - Defense inside limits - legal fees reduce the total payout.
  - Reporting deadlines - claims-made means timing is everything.
  - Past director coverage - often missing unless specifically endorsed.
  - Insured vs. insured exclusions - can block coverage for disputes among board members.

22

## Complementary Coverages: Filling the Gaps

- **General Liability (GL):**
  - Covers bodily injury and property damage: think slips, falls, and contractor damage.
  - Doesn't apply to governance or fiduciary decisions.
- **Fidelity / Crime Bond:**
  - Covers theft or embezzlement by employees or board members.
  - Increasingly required by mortgage lenders and state statutes.
- **Employment Practices Liability (EPLI):**
  - Covers wrongful termination, discrimination, or harassment involving association staff.
  - Often needed if the association employs maintenance or concierge staff.
- **Cyber Liability:**
  - Covers data breaches, ransomware, or stolen owner information.
  - Essential for boards storing owner records or using online payment systems.

23

## Coverage Comparison

Five red flags that separate good coverage from bad

| Category                     | Strong Program Does This                          | Weak Program Often Does This          |
|------------------------------|---------------------------------------------------|---------------------------------------|
| <b>Who's Insured</b>         | Covers past, current, and future directors        | Excludes past board members           |
| <b>Definition of "Claim"</b> | Includes subpoenas, mediation, and investigations | Only covers lawsuits                  |
| <b>Defense Costs</b>         | Paid <b>outside</b> limits                        | Paid <b>inside</b> , eroding coverage |
| <b>Reporting Window</b>      | 90–120 days after policy end                      | 30–60 days (easy to miss)             |
| <b>Consent to Settle</b>     | Requires board approval                           | Carrier can settle without consent    |

24

## Practical Steps – How Boards Can Stay Protected (or “Defensible”)

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- Educate directors
- Strengthen documentation
- Proactive communication
- Annual policy review
- Formal risk assessments

25

## Step 1: Educate Directors (With the Right Team)

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- Most volunteer directors start with strong intent but limited training in governance or risk.
- A knowledgeable property manager keeps the board aligned with procedures and compliance.
- Boards that leverage legal, accounting, and insurance advisors early make stronger, defensible decisions.
- Education is ongoing, delivered through real-time guidance, not classroom sessions.
- **Mini Case**
  - *A 90-unit association hired a seasoned manager who implemented clearer workflows for contractor vetting and insurance tracking. Within one renewal cycle, the board’s claims history and underwriter perception improved dramatically.*
- **What Good Looks Like** 
  - Manager briefs the board quarterly on risk and compliance updates.
  - New directors receive an orientation packet with bylaws, insurance summary, and contact list.
  - Directors understand who to call, manager, attorney, or broker, before issues escalate.

26

## Step 2: Strengthen Documentation

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- Strong records prove diligence and are your best defense in any lawsuit.
- Consistent minutes, maintenance logs, and vendor files show accountability.
- Documentation builds underwriting confidence and lowers pricing volatility.
- **Mini Case**
  - *A Cape Cod board produced engineering emails and maintenance logs during a leak dispute resulted in the claim dismissed within weeks.*
- **What Good Looks Like** 
  - Meeting minutes finalized within 30 days.
  - Maintenance requests logged and tracked to completion.
  - Reserve study and insurance summaries stored digitally and accessible to all directors.

27

## Step 3: Communicate Proactively

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- Lack of information fuels mistrust; clear communication diffuses conflict.
- Regular owner updates turn complaints into cooperation.
- Early communication during projects avoids rumor spirals and social-media flare-ups.
- **Mini Case**
  - *A Newton association began monthly email updates and open-house Q&As, resulting in owner complaints dropping by 80%, and the next budget passed unanimously.*
- **What Good Looks Like** 
  - Post-meeting summaries shared within a week.
  - Annual “State of the Association” newsletter issued.
  - Feedback channels (email or portal) tracked by management.

28

## Step 4: Review Insurance Annually

- Annual review ensures coverage reflects current exposures and addresses emerging risks.
- Major capital projects, loans, or amenity changes can shift risk dramatically.
- Benchmarking coverage against peers identifies hidden gaps.
- **Mini Case**
  - *A South Shore condo added rooftop solar without notifying its broker, a subsequent lightning claim initially denied for unscheduled equipment.*
- **What Good Looks Like** 
  - Annual joint review with manager + broker.
  - Coverage benchmarked against similar properties.
  - Post-project insurance updates completed within 30 days.

29

## Step 5: Conduct Risk Assessments

- Annual risk audits reveal exposures before they become lawsuits.
- Include governance, contracts, vendor compliance, and physical assets.
- Proactive assessments strengthen renewal submissions and pricing.
- **Mini Case**
  - *A 100-unit association's pre-project risk review found missing vendor indemnity language, correcting it prevented a potential six-figure dispute.*
- **What Good Looks Like** 
  - Annual walk-through with management + broker.
  - Vendor COIs verified and archived.
  - Written "Incident Response Plan" kept on file.

30

## In-Closing: The Bigger Picture

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- Legal accountability for volunteer boards mirrors corporate governance.
- Regulators, insurers, and owners all expect higher transparency.
- Strong governance = lower premiums and fewer claims.
- The goal isn't fear, it's preparedness and partnership.

31

## Top 3 Takeaways: What to Remember after Today

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- Litigation Is Rising But Preventable.
  - Most claims stem from process gaps, not malice.
- D&O Is Vital, But Not Enough.
  - Complementary coverages and documentation close the gaps.
- Risk Management Is a Team Sport.
  - Boards + Managers + Advisors = Fewer Claims, Better Coverage.

32

## Thank You & Next Steps

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- Benchmark your association's D&O and governance practices.
- Download or request the Board Risk Checklist.
- Connect for a renewal benchmarking review or risk audit
- Valentine Feeney
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33

## QUESTIONS



34

## Your Feedback Matters



THANK YOU!

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35

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36