

CLAIMS MADE
vs.
OCCURRENCE LIABILITY INSURANCE

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Most association documents require that the Board of Directors review their insurance policies on an annual basis and Nevada Revised Statutes have requirements as well. It is wise for the Board to have their insurance professional review their requirements to ensure that adequate coverage is provided and there are no holes.

When getting bids for liability insurance coverage many associations shop by price alone. With insurance, this can be a very dangerous practice as many other factors must be taken into consideration. One of the most critical types of insurance that must be considered before a change in carriers and/or policies is considered is whether your liability policy is “Claims Made” or “Occurrence” insurance.

Basically, “claims made” liability coverage will pay on behalf of the insured sums which the insured becomes legally obligated to pay as damages because of bodily injury or property damage caused by an occurrence and for which the claim is first made against the insured during the period that the policy is in force.

Under an “occurrence” basis liability policy, the company agrees to pay on behalf of the insured sums which he becomes legally obligated to pay for bodily injury or property damaged caused by an occurrence. The injury or damage must occur during the policy period. In other words if a bodily injury or property damage may have occurred some years ago, regardless of when it is reported, the coverage of the policy in force at the time of the injury is the policy to which the claim would apply. On a “claims made” form only if the injury is reported during the policy period will there be coverage.

Lets consider the following example of an association who in 1990 had in force an “occurrence” policy with a per person bodily injury limit of \$500,000. The limit was increased to \$750,000 in 1991.

On January 1, 1992 this insured purchased a “claims made” form with a per person bodily injury limit of \$750,000 and a retroactive date of 1/1/92. They kept the same form of insurance from 1992 through 1995, but raised the limit to \$1,000,000 on 1/1/1994. Beginning in 1996 they returned to “occurrence” insurance but could purchase only \$200,000 per person bodily injury coverage. They were able to raise this to \$250,000 in the policy year 1997.

The switching from “occurrence” to “claims made” caused no problem and in fact improves coverage somewhat since the limits of liability in force at the time the claim is first made are the limits available if the injury occurred subsequent to the retro date in the “claims made” form.

The retroactive date, i.e. the date in the “claims made” policy injuries occurring before which are not covered regardless of when reported is critical and must be carefully negotiated.

Changing from “claims made” to “occurrence” leaves wide gaps in protection.

In summary, "claims made" forms appear to provide satisfactory if not superior coverage over a period of years. A new association has little to fear from "claims made" supplemented by a proper discover form needed in case of cancellation, non-renewal, or retirement. The change from "occurrence" to "claims made" will not cause hardship if the retro date is properly handled. The reserve switch, i.e. "claims made" to "occurrence" can be hazardous.

Before making any decisions to switch coverage, consult with your broker/agent and get a written statement of risks. Put their E & O insurance on the hook for bad advice or leaving too many loopholes.