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ATTORNEYS AT LAW

It is very important for associations to understand what is considered a “claim” under their insurance policies and when they need to put their insurance carrier on notice of a potential claim. If associations do not notify their insurance carriers of a potential claim and are later sued, their insurance carrier may not cover the claim. Also, associations often change insurance carriers and, if the first notice of a potential claim arose while the association was covered by a different insurance carrier, the present insurance carrier is unlikely to cover the association for the claim (unless the association listed the matter as a potential claim when it filled out its application for insurance). Therefore, associations should carefully review their insurance policies to identify what is considered a “claim” under the policy and when the association is required to notify the insurance carrier of a potential claim.

Also, if the association encounters a potential claim, it also needs to determine which insurance carriers to notify. Often an association has different insurance coverage for its directors and officers liability (“D&O”) policy than its commercial general liability (“CGL”) policy. The association may need to put both insurance carriers on notice of the potential claim, as the association may not be able to tell which policy would be triggered in a future lawsuit. There are many situations where both policies could be triggered. If the association notifies one carrier but not the other, and a subsequent lawsuit is filed in such a way that it triggers the other policy, that insurance carrier is likely to argue that it will not cover the claim due to lack of notice. If the association has an umbrella policy as well with a different insurance carrier, the association may need to notify that carrier as well. Otherwise, coverage could be denied in the future for lack of notice.

In summary, associations need to understand what is a claim under their insurance policies and when they need to notify their insurance carriers of a potential claim. Furthermore, associations need to make sure to notify all carriers who could provide coverage for a potential claim in the future.

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