

# Community Associations & COVID-19

## FAQ



## INSURANCE COVERAGE AND RISK MANAGEMENT FREQUENTLY ASKED QUESTIONS

### **Is there any insurance coverage for opening association amenities?**

There will not be any D&O coverage for bodily injury. It is very unlikely that the absolute exclusion will not apply. If a state is not requiring an association to open certain amenities and common areas and the association decides to do so anyways, they are exposing themselves to liability, they are not obligated to assume. If a community decides to reopen amenities, they need to consider transferring the procedures to a third-party business partner.

### **Should an association seek volunteers to enforce social distancing and residents wearing masks in the association's common areas?**

No. This would be a poor decision by the board and will expose the association to liability.

### **Should an association hire professional services to clean the community common areas and amenities?**

No. The best practice, as with all business partners is to get a certificate of insurance, which may not work, but make sure the contract with the BP has an indemnification provision in the contract. There may still be exposure to liability even if professionals are hired. However, by hiring a professional business partner who is qualified to do this should be a good basis to assert the business judgment rule. One approach the board may take to manage risk in this situation would be to create an indemnification agreement with the professional company.

### **If a unit owner or guest got sick with covid-19 alleging the association negligently maintained the common elements that could not be closed?**

Yes. This will be a policy by policy issue, and a state by state issue. Some policies have an "occurrence" requirement which is probably a fact question and would probably give rise to a defense obligation. Some policies may also have the communicable disease exclusion.

### **Does an association have to open an amenity for an owner who has made a request for a reasonable accommodation for water therapy or exercise therapy if they have a note from the doctor?**

There is likely some form of coverage for this type of risk, however the association is still exposing themselves to liability. This is a situation where a board should not deny this lightly. It should not be denied without advice of counsel. This is a case where the board and community should be more flexible.

### **Is there any insurance coverage for an association that offers flexibility for collecting assessments?**

Maybe yes, maybe no. The association will still be exposed to liability, however if they based this decision on advice from counsel, there is a possibility of asserting the business judgment rule. In this scenario, an association may be able to manage risk by seeking the reasonable advice of their council. Even if advice of counsel, they will probably sue or bring a claim, but will be on good footing to assert the business judgment rule.

**Is an association exposing themselves to liability if they offer flexibility in enforcing covenants (i.e. RV parking, twinkle lights, signage to support healthcare workers, etc.)?**

Residents may still bring claims and sue, however, to manage the risk it is recommended the manager, board, and community lawyer, to hold a Town Hall meeting to give unit owners the ability share their thoughts.

**Are board members protected if they are personally sued?**

If they are sued in their capacity as a board member, and there are no other issues with coverage, there could be coverage. They may ask their personal agent and check the language of their personal umbrella if they have one.

**If the board notifies all members by email that Unit 1 Owner has Corvid-19 and Unit Owner 1 brings a claim or civil suit, will the board be defended and or indemnified for invasion of right of privacy and or defamation?**

Maybe yes, maybe no. Under the D&O the association must discuss this with counsel. If they do this without advice of counsel your insurance agent may not renew your policy. This also is subject to the Absolute Bodily Injury exclusion. Under the general liability, the “occurrence issue does not exist.” These are all intentional torts. I think the general liability policy would have to defend, but they will do under a reservation of rights.

**What, if anything, can a management company do if a manager contracts COVID-19 on the job?**

There is likely no coverage under workers compensation, however, this claim may fall under the category that it was a necessity of the job to be on site if a manager is an essential worker in their state.

**Industry Experts on COVID-19 Insurance Coverage and Risk Management FAQs:**

- Joel W. Meskin, Esq., CIRMS, CCAL, McGowan Program Administrators
- Karen O’Connor Corrigan, CIRMS, O’Connor Insurance, St. Louis, Missouri
- Clifford J. Treese, CIRMS, Association Data, Inc.

**RESOURCES**

Now is a good time to remind community association residents, board leaders, and managers of their [Rights & Responsibilities for Better Communities](#) and the [Community Association Civility Pledge](#).

View the latest COVID-19 resources and guidance from CAI by visiting [www.caionline.org/coronavirus](http://www.caionline.org/coronavirus)

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