

ATTORNEY WRITES

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Liability Concerns

Periodically, I receive questions from riparians who serve on a lake or river property owners association (or who are considering doing so) and are concerned about potential personal liability for themselves possibly arising out of such service. They also wonder whether their own personal insurance will cover any such potential liabilities, and if not, whether the association should carry appropriate insurance.

In general, there are two potential types of liability for which officers or directors of a property owners association should be concerned. The first type of liability is that which comes to mind for most lay people—a person or their property is physically injured (or, in the case of a person, also if death results) which either occurs on association owned or controlled property or as the result of an association sponsored event (such as a boat parade, ice cream social or meeting). Insurance to cover such potential damages is often referred to as general liability insurance. The second type of liability potential involves malpractice, malfeasance or misconduct by an association or its officers or board members. Insurance to protect against such liability is often referred to as “errors and omissions” insurance.

Members of the board of directors and the officers of an association can shore up their defenses against potential personal liability by ensuring that the association is properly set up as a Michigan nonprofit corporation. (Please also see my earlier column on the benefits of such incorporation in the February 1997 issue of the *Riparian*). Ensuring that a property owners association is a Michigan nonprofit corporation in good standing will help insulate against potential liability for officers and directors, but will not completely eliminate all potential for personal liability. In fact, there are at least two different ways where an association’s corporate status will not protect against personal liability. The first situation occurs where the association has little or minimal assets or insurance. In that case, a court will sometimes “pierce the corporate veil” of an undercapitalized association and potentially pursue personal liability against officers or directors. The second situation may come into play where an officer or director is sued personally for potential liability and damages (often in addition to the corporation, and potentially other officers and directors, being sued) since the particular officer or director involved personally participated in the event which gave rise to the injury. (For example, the corporate officer helped build the association’s swing set which collapsed on a child or personally libeled or slandered another individual regarding an association-related matter). Thus, while incorporation of a property owners association can help diminish the potential for personal liability of officers and directors, the risk of personal liability is not eliminated altogether.

Based on the above, it is important that proper insurance be in place. Unfortunately, most insurance policies for individuals do not cover damages for liability related to the person serving as an officer or director of an association (whether the injury is based upon

physical injury or alleged malpractice or misconduct). Therefore, to the extent that there will be any insurance coverage, it will likely have to be contained in an insurance policy or policies covering and purchased by the association. The bad news is that such insurance coverage can be expensive. While it is fairly common for property owners associations to have general liability insurance for property damage and personal injury, most such associations do not carry errors and omissions insurance for officers and directors. For a fuller discussion regarding insurance coverage for riparian landowners in general, please see the August 2004 issue of the *Riparian* magazine.