

# Broker Bulletin:

## Community Associations



### Distinguished Community Associations – Directors & Officers

Date: 10/17/24

Subject: Berkley Directors & Officers – Program Overview

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**EFFECTIVE DATE OF CHANGE:**      **JANUARY 1, 2025**

#### PROGRAM CARRIER

- Berkley Program Specialists (Insuring Paper – Starnet Insurance Company)
- A.M Best Rating A+ XV (Superior)
- Admitted

#### TARGET PROFILE:

- Condominium Associations (COAs)
- Homeowners Associations (HOAs)
- Associations under Development (projected completed units up to 500 units)
- Cooperative (CO-OPs)
- Commercial Condominiums
- Planned Unit Developments (PUDs)

**ELIGIBILITY:** Associations Up to 500 Units / Up to 4 Employees / Up to \$2M Average Unit Market Value / No Claims

#### Forms / Limits / Coverages

**COVERAGE FORM:** Proprietary Coverage Form / Claims made

#### LIMITS / RETENTION

- Limits: \$1M, \$2M, and \$3M (*no longer offer \$4M and \$5M*)
  - California and Florida: \$1M and \$2M
- Retention: \$1,000, \$2,500, \$5,000, \$10,000, \$15,000, \$25,000 and \$50,000
  - New York & New Jersey: Minimum Retention of \$2,500

#### PROGRAM COVERAGE HIGHLIGHTS

- First Dollar Defense
- Defense outside the limit of liability
- Full prior acts coverage, with a Prior and Pending Litigation Date
- Defense for breach of third-party contract
- Defense for non-monetary damage allegations
- No individual insured vs. individual insured exclusion
- A duty to defend the association and its members
- Broad definition of insured, including those performing property management services
- Cyber Data Breach Coverage Endorsement included

<b>INSURING AGREEMENT - BERKLEY</b>
<b>Insuring Agreement A</b> – <i>No change from prior program</i>
<b>Insuring Agreement B</b> – <i>No change from prior program</i>
<b>Insuring Agreement C</b> – <i>No change from prior program</i>
<b>Defense Costs</b> – <i>No change from prior program</i>
<b>Duty to Defend</b> – <i>No change from prior program</i>
<b>Full Prior Acts Coverage</b> – <i>No change from prior program</i> . For renewals, PPL date on Berkley policy will match Great American expiring policy.
<b>Employment Practices Liability (EPL)</b> – <i>No change from prior program</i>
<b>Property Manager/Management Company</b> – <i>No change from prior program</i>
<b>Defense Coverage for Breach of Contract Claims</b> – <i>No change from prior program</i>
<b>Choice of Counsel</b> - Insured will no longer have the option to choose their own counsel and will have to use Berkley approval counsel.
<p><b>Hammer Clause</b> - If a settlement is recommended in writing and the insured does not consent to settle, Berkley’s liability is limited to:</p> <ul style="list-style-type: none"> <li>• The amount of loss excess of the retention (if any) which they would have paid to settle the claim had the insured consented to the settlement; and</li> <li>• The costs of defense covered by the policy and incurred as of the date Berkley recommended the settlement to the insured in writing.</li> </ul> <p>Upon failing to provide written consent to a settlement the insured shall, at its sole expense, assume all further responsibility for the Costs of Defense incurred after the date the insurer recommended the settlement to the insured in writing, including all additional costs associated with the investigation, defense and/or settlement of the Claim.</p>
<b>Noise Exclusion</b> - The coverage form does not exclude coverage for claims arising from noise. A noise exclusion endorsement will be added to all NY policies.

### Additional Coverage Information

**CHOICE OF COUNSEL:** No longer option to choose own counsel

**DEFENSE COSTS**

- Defense costs are outside the limit and are not subject to the retention
- Duty to Defend

**DISCOVERY PERIOD** (*aka Extended Reporting Period or Tail Coverage*)

- Ninety (90) day automatic Discovery Period if cancelled or non-renewed by company for any reason other than non-payment. (*May vary by state*)
- Available for purchase (*Options may vary by state*)

## **EMPLOYMENT PRACTICES LIABILITY (EPLI)**

EPLI and its coverage for wrongful acts related to employment, including but not limited to\*, wrongful dismissal, workplace harassment, failure to promote, retaliation is included. (\*See policy for complete list under definition of *Employment Practices Wrongful Act*)

**FLSA:** Claims are sub-limited as \$150,000 for defense as noted in Item 3 on the dec page

## **HAMMER CLAUSE**

- If the insured elects *not* to proceed with a suggested settlement, the Hammer Clause limits the insurer's liability to:
  - the Amount of Loss in excess of the retention (if any) which the Insurer would have paid to settle the Claim had the Insured consented to the recommended settlement; and
  - the Costs of Defense covered by the Policy and incurred as of the date the insured recommended the settlement in writing to the insured.
  - Insured assumes all further responsibility for the costs of defense after the carrier recommended to settle, including all additional costs associated with the investigation, defense and/or settlement of the claim.

## **PRIOR AND PENDING LITIGATION (PPL) DATE**

- Full prior acts provided. Prior acts are not excluded, except for previously known acts
- *Note: PPL date on policies that transition to the Berkley program will match the date on the expiring Great American policy.*

## **ADDITIONAL BERKLEY PROGRAM INELIGIBILITIES** *(Prior program ineligibilities still apply)*

- Accounts with D&O coverage currently written with a Berkley Company are not eligible
- The following association types are not eligible:
  - Timeshare Associations
  - Boat Dock/Marina Associations (100% Dock/Slip or Marina exposure, with no residential)
  - Hangar Associations
  - Condotels and Condops
  - RV/Mobile Home Parks/Associations
  - Master Associations with more than 7 sub-associations
- Associations with over 50% short-term rental exposure are ineligible
- Associations that are not fully built out and have an expected unit count at completion that is greater than 500 units are ineligible
- *Florida – New Business Only* - Associations (residential condominiums, co-ops and residential/commercial mixed use) that are 3 stories or greater and 20 years or older are no longer eligible

## COMMUNITY ASSOCIATIONS PROGRAM OFFERINGS ([visit our website](#))

- Community Association Package\*
- Express Community Association Umbrella
- Directors & Officers
- Crime
- Cyber

\* Available in AZ, CA, CO, CT, MD, MI, NC, NJ, NV, OH, OR, PA, SC, TN, UT, VA, WA (individual state restrictions apply)

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