

Webinar | Expert Industry Panel

Protecting Community Associations: Liability Risks Brokers Need to Know



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COMMUNITY ASSOCIATIONS

Allie De Sieno:

Hello everyone, and thank you for joining us for our webinar, *"Protecting Community Associations: Liability Risk Brokers Need to Know."* My name is Allie De Sieno, and I'm the Assistant Vice President of Marketing Communications at Distinguished. I'm excited to introduce today's discussion with members of our Community Associations team. During this session, we will learn about the value of umbrella insurance and how this is essential for community associations today.

Before we get started, a quick note: we'll send all registrants a copy of the slides, the webinar recording, and a PDF with the questions and answers from today's session later next week. If anyone has a question during the presentation, please use the Q&A button at the bottom of your screen. And if we don't get to questions today, the team will reach out to you directly.

Distinguished is a leading national insurance program manager providing specialized insurance solutions for real estate, community associations, hotels, restaurants, cyber liability, fine art and collectibles, inland marine, executive lines, crisis management, surety bonds, marine cargo, transactional risk, and environmental and construction professional insurance.

Joining us today is Barb Bartson. Barb is the President of the Community Associations Program and oversees the overall strategy and management of our portfolio of community association products, including primary package, directors and officers, crime, and umbrella. Barb joined Distinguished in February 2017 after over 30 years with various insurance carriers. Her discipline is underwriting, primarily for excess liability, with a multitude of roles. While at Distinguished, Barb managed the small accounts underwriting team until 2021, when she moved on to the community associations team as the program manager to oversee the sales, underwriting, and operations for the team of 25.

Also joining us today is Susan Merisko, Business Development Manager for our Community Associations Program. Susan joined Distinguished in 2019 and brings over 30 years of comprehensive insurance experience across underwriting, executive sales leadership, and regulatory compliance. Notably, her background includes serving as an expert legal witness on regulatory and underwriting standards. This extensive experience gives her a profound understanding of the complex, highly litigious environment that community associations operate within today.

Let's jump right in.

Barb Bartson:

I want to personally thank everyone for joining us today. Susan and I are really excited to share some of our insights that we have seen with community associations. I always like to begin the conversation by defining the words we're talking about, and liability is the key point today. And the liability for a community association is its legal responsibility. As you know, it's to maintain the common areas, oversee the operations of the association, and comply with the governing documents, which include the CC&Rs bylaws, rules, and regulations.

Barb Bartson: If they fail to uphold these responsibilities, they can be found negligent and could potentially lead to a lawsuit.

Today, Susan and I are going to review several exposures that we often see and that are very top of mind for us. It's not an all-inclusive list, but it includes the ones we see most frequently.

So Susan, you want to start by talking about aging buildings?

Susan Merisko: I think aging properties is probably the best place to start. It's certainly been a topic in the news and within the industry that everyone is talking about. As buildings get older, routine maintenance can gradually turn into a much bigger liability issue. And we're not talking about cosmetic wear and tear or exterior structural changes, but all the systems you don't see- things you don't see every day that are functional, such as aging plumbing, corroded pipes, and outdated electrical wiring and HVAC systems. When a neglected pipe bursts, for example, or old wiring causes a fire, the damage can spread across multiple units, and those costs can ultimately come back to your community association.

Then there are the more obvious safety concerns: cracked sidewalks, deteriorating balconies, railings, or ongoing water and mold issues. It's inevitable that core building systems are going to deteriorate over time, but the bigger issue comes when a board knows about these issues but doesn't act. This exposes the association to increased liability for injury and damages due to negligence. Deferring maintenance and upkeep can turn a minor system repair into a major one. And of course, the cost grows exponentially the longer the repair is postponed. If professional engineering recommendations are also ignored or dues are intentionally kept low while reserves continue to fall short, the board can put its protection under the business judgment rule at risk, and the consequences can escalate quickly as well. Homeowners may bring breach-of-duty claims, compliance and code violations, insurance coverages can become more difficult or expensive to obtain, and the association may have to impose a large special assessment just to address the emergency.

That brings us to another area where seemingly minor conditions can quickly turn into major claims. We're talking about premises liability, specifically slip-and-fall incidents. A trip-and-fall used to be an embarrassment, right? You tripped, you looked around, and you hoped no one saw you. Now, people trip-and-fall and hope everyone sees them and has, in fact, a video they can use to serve as the ultimate unbiased evidence in a premises liability lawsuit. What can seem like a minor event at first for a community association can, unfortunately, create significant legal and financial exposures.

Think about all the potential trouble spots in a common area, for example, uneven concrete, potholes in the parking lot, wet pool decks, or stairways that aren't lit properly. Then, add in things like delayed snow removal, landscaping that blocks a driveway or pathway, or missing warning signs, and the risk continues to increase even further.

Susan Merisko:

At the center of these claims is the board's duty of care. If a known hazard isn't addressed and someone's injured, for example, the financial impact can extend far beyond the individual incident. As a community, they could be looking at costly lawsuits, higher insurance premiums, and, in cases where gross negligence is established, possibly even personal liability for individual board members. So clearly, physical conditions matter.

Maintaining walkways and common areas is only one aspect, though, of the association's duty of care. Protecting residents from the security-related risk introduces another set of complex liability considerations. And Barb, I think you have more to talk about on this.

Barb Bartson:

Yes, I do. Security on a complex can vary by association and depending on where they're located, the needs or the wants of the unit owners. We find that more affluent complexes have a higher demand for security, and there are other factors that contribute to the level of security an association has; you can work with your clients to ensure they have what they need. It's the responsibility of the association to maintain that equipment and to ensure that it adequately protects their unit owners, and you can't forget their guests. And if they don't do that, they'll be found negligent. But one thing you cannot forget about is the implied protection, and sometimes this is forsaken.

So if there's a gatehouse, you are going to assume that it's attended. If there's a gate, you're going to assume that it keeps out the unwanted. If there's a camera, you're going to assume it's recording. But an unattended gatehouse, a video camera as a decoy, or a gate that's left open can leave the association very vulnerable to negligence. The unit owners and their guests assume there's protection and then, if a predator enters the premises and a violent act occurs, the association will be held negligent. The attorneys will say, "Well, why was the gate left open? Isn't there a guard in the gatehouse?" And as a unit owner, you may say, "Well, there's never been a guard in the gatehouse," but your guests may not know that, and they are assuming protection. And the attorneys will jump right all over that, which will escalate the level of liability that the association may incur.

I always love to use claims examples. I have one in regard to security: we insured an association, and there was a mailbox on the edge of the premises. And this woman, who was about eight months pregnant, was shot, and she and her baby died. Horrific, horrific incident. The association's like, "Well, we had nothing to do with that," but they were held liable because they said there was inadequate lighting. You have to stretch your mind to think how that horrific event was the association's responsibility, but this is what the attorneys do. And they said, "Well, they didn't have enough lighting right over the mailbox," and the association paid millions of dollars. So security negligence is a real thing. It's one of the severity triggers for associations. Bad things happen to good people, and once that happens, you will get a sympathetic jury that may award a large award for damages.

Barb Bartson:

Which leads me to another exposure that I think community associations really should be concerned about: swimming pools. Swimming pools are a significant severity trigger, and one I would probably say is number one for our claims that I have seen. And we do everything we can to protect the pool: you properly fence it, you have signage, you have the self-locking gates, you've got life safety equipment, and all those different protections that you put around the pool to ensure they're safe. But just as important as having that equipment is enforcing the rules. You can have the best safeguards in place, but if they're not enforced, then there's a higher probability of proving negligence for the association. For example, people swimming after hours, the gate left open; we see moms will prop open the gate so their children can come in and out easily, allowing alcohol around the pool when the sign says "No Alcohol." And if the association or the property manager is aware of people violating the rules, then it becomes an additional liability for the association that they really need to be mindful of.

What you want to guide your associations to do is have the rules and enforce the rules. That gives attorneys a defensible position to mitigate damages. So if somebody gets severely injured around the pool, it doesn't mean the damages completely go away. But if they have a defensible position saying, "Well, we have the signs posted and they were there after hours without our knowledge," then the attorney can go in and say, "It wasn't our association's responsibility." Lifeguards are one of my favorite topics around swimming pools, and it's very debatable, right? Do you have a lifeguard or don't you have a lifeguard? Is it good or is it bad? I would argue that they only increase the liability for the association.

Have you ever sat at the side of the pool and looked up at the lifeguard? They tend to be younger and easily distracted; their phone is hidden under the towels. They don't have the keenest eye, but as a mom of a child, you're like, "Oh, I'm going to go get an ice cream cone," and you see they're sitting right beneath the lifeguard; you assume that the lifeguard's going to protect your child. And if they drown, you now have increased liability because there's an expectation the lifeguard's going to keep your child safe.

So is that better than having a sign "Swim At Your Own Risk?" I would say it is. Often, the association subcontracts the swimming pool services. Those pool companies tend not to carry a lot of insurance. A million or two million in insurance is not going to protect you from the potential damages of a drowned child.

I always have examples of losses. This one occurred in a litigious venue, so keep that in mind. But some renters went to the pool after hours and were drinking. The property manager knew they were doing it, the worst-case scenario as I described. And some young father dived into the shallow end, broke his neck, and became a paraplegic. His life care was extremely expensive. You had a very sympathetic jury in a litigious venue, and it was a multimillion-dollar claim. The association didn't really do much wrong, except that they knew this was going on.

Susan, do you want to talk a little bit further about renters?

Susan Merisko:

You bet. And you speak to it, but who is actually living in or visiting the community can drastically change the association's exposure. Particularly when a community association allows rentals, the liability profile can change pretty quickly. You're no longer dealing exclusively with the permanent residents, and now, you may have short-term tenants, vacation rentals, guests who are unfamiliar with the property, and landlords who may not even live nearby. This creates what we call an unknown visitor risk. Someone who doesn't know the property layout. They're less familiar with entrances, exits, stairs, parking lots, and potential hazards like around the pool. This again contributes to increased liability risk.

And depending on the extent of the rentals, you spoke earlier about security and premises liability expectations; this can also add to and complicate that exposure. There's a financial consideration too that we can't dismiss. If the rental ratio becomes too high, there's certain mortgage programs that may be affected, and this includes financially-backed organizations such as Fannie Mae and FHA. This can make it more difficult for buyers to obtain financing and potentially affect the property values. And then, of course, there's the insurance side of things. If a tenant brings a claim against the association and the master policy may have a commercial use exclusion, this can apply to the circumstance, and coverage could be challenged or even denied. This can leave the association and its homeowners facing significant defense and settlement costs.

So it's important to know rentals introduce a whole new layer of exposure, but one of the most common problems we see across virtually every type of association is something much simpler: water. We can't talk about association liability without talking about water damage. It is one of the most frequent, expensive, and complicated issues an association can face. And in a shared-wall community such as a condo, one leak can create an immediate dispute. Why? Well, because the first question that comes up is, "Who's responsible?" And the answer depends on several things. Where did the leak originate from? What do the governing documents say? And also, was there negligence, and who was negligent? For example, take a water mainline break; it suddenly fails. The association could be responsible for repairing the pipe itself. However, that doesn't necessarily mean the association is also responsible for damages that the unit owner has to their personal property.

The situation, however, could be different if the association was aware that the system was failing and didn't take reasonable steps to address the issue. That's where a maintenance issue can potentially become a fiduciary responsibility issue, or a fiduciary duty issue, is another way of saying it. And the cost can appreciate and escalate very quickly. Water deductibles can be substantial. Sometimes they're reaching tens of thousands of dollars for a single claim. And when repairs are delayed because the parties are still disputing who's responsible and who's not, the water continues to leak. It results in secondary damage, such as mold, which can then make the situation even more expensive and more complicated. So water damage is a perfect example of how a relatively simple maintenance problem can quickly become a major liability issue for an association. Simply put, it goes from bad to worse.

Susan Merisko: So what can boards do? We can list, and we've only listed some of the situations that the liabilities and exposures that boards have, but whether a property claim is a liability is always asked.

Barb Bartson: As we talk about property claims leading to liability, we can easily assess that this can be the case, and the frequency of property claims can become a liability. In this fictitious example that we're showing here, we have an older building, an older community; the pipes are deteriorating. They've fixed the leaks over multiple periods of time, and the water continues to leak from the pipes. The association board decided not to repair the pipes because they didn't want to do a special assessment, and no one wants to do one. This becomes a major pain point for the association. But as you can expect on that cold winter night on the weekend, one of the pipes bursts on the third floor of the building and the water flows down the walls, damages the floors, damages personal property, and the electrical has been ruined.

And then potentially, like Susan said, mold is horrific. Sometimes you don't know about it until it's too late. And again, it continues to grow and develop, and this is one of those multi-year type of exposures that can be really devastating to the association. So what coverages would be triggered in this particular example? You've got property, general liability (GL), directors & officers (D&O), and umbrella.

So let's dig a little bit deeper into what that could mean for this particular example. For property, it's obvious, right? Property damage to the building. If you have common buildings, any loss of use can be pretty obvious in how that coverage would be triggered. GL, just as Susan mentioned, slip-and-falls are huge, but if it's a cold winter night, now you have ice. That can escalate the number of slip-and-falls. Like I said, mold, damage to the personal property of the unit owners. That can become a liability for the association. And if the unit owner has to relocate, then it also becomes a liability for the association. Those are ones that you often think are property-type first-party claims, but because it's not the association submitting the claim, but the unit owners, then it potentially could become a liability.

Directors and officers, I would argue doing this at every potential loss, regardless if it's property, GL can lead to a directors and officers claim. So, the decision in this example for the board not to repair the pipes, knowing of the damage to the pipes, and making that deliberate decision, is a wrongful act. That can trigger the D&O claim. You really do need to think about the board's actions and how they impact their D&O and the potential for wrongful acts.

Every GL liability claim can trigger the umbrella. Umbrella is for those high-severity claims. And you may say, "I never had an umbrella loss," but a slip-and-fall on the ice of an older person is much more expensive than a slip-and-fall of a younger person. So I've seen slip-and-falls hit the umbrella. They can get really big pretty quickly depending on the injuries or construction defect. If the mold creates some kind of construction defect or the water seepage in the windows, that's another place where you can find an umbrella claim if it damages the building structurally.

Barb Bartson: So these are all significant types of events that could reach the umbrella. And that's why I truly believe everybody needs to get an umbrella because you never know when an accident can end up being a lot of damage to the association.

So what can you do about all of this?

Susan Merisko: That's a great question. I think the question is what boards can do to protect the community's financial health while also reducing their own exposure. So there is some good news in all this. I know we've been talking about liabilities, exposures, and property damage, but boards really aren't powerless. There are some concrete steps that they can take to reduce the exposures before they even become claims. Let's walk through a couple of these. And of course, there are many more, but let's address really kind of the overarching ones.

I think the key one I'd promote first is moving away from being reactive and toward a more proactive approach to managing risk. First, know the rules. I know that sounds obvious, but boards should understand not only their state laws, but their governing documents and specific CC&Rs. This is especially important when new members or new board members join. Often, exiting board members are very familiar with things, but you need to make sure new members understand them just as well.

Secondly, document major decisions, expert recommendations, consultations, and make sure that the board votes are all clearly reflected in the official minutes. Good documentation can go a long way in demonstrating how and why decisions are made. From a safety standpoint, just be as intentional. Maintain documentation about snow removal schedules, for example. Have vendors record when services are performed and use clear warning signs wherever hazards exist. Operationally, establish a preventive maintenance plan and make sure there are clear procedures for emergencies, whether that's a major water loss or a fire; plan as well as possible for unexpected events. That one's a little tricky because you don't know what it is, so it's hard to plan. Financially, keep a reserve study current and make sure the association is funding the reserves appropriately for the repairs and replacements it knows are needed and will be coming.

And finally, know when to call in the experts. Property managers, attorneys, engineers, and financial professionals can provide critical guidance before a major decision is made. Vendor contracts should also include appropriate indemnification and hold harmless provisions to help protect the association.

These steps can significantly reduce exposure, but honestly, no preventive strategy eliminates every risk. And that's where insurance becomes the final layer of protection. When prevention isn't enough, a comprehensive insurance program becomes the association's last line of defense against potentially catastrophic financial loss. So rather than just talking about what could happen, Barb, I'm going to turn it over to you so we can help explain what can actually happen in the real world.

Barb Bartson:

Well, it's the unexpected, right? So you think you're prepared, you follow the list, you check it off, you check it twice, and then all of a sudden, a boulder falls down from the hillside next to your association's building and goes into the bedroom of one of the unit owners, and they wake up to a 20-pound boulder right next to them. And you guys think I'm making this up, but this is one of our claims, truly unexpected for the unit owner. There may have been a hint to the board that there was some loose rock around the buildings, but they didn't really do anything about it, and nobody would expect it to roll down the hill. So obviously, there's property damage here to repair the unit, but I don't know about you, but it would probably be mental anguish for me to wake up to a 20-pound boulder sitting next to my bed.

This is what the association really needs to be aware of: the unexpected, being prepared, and, as I said before, doing all the right things. And when something like this happens, they have the insurance protection, they have a defensible position if the attorneys need to go to court, and the damages can get pretty big on this and the defense costs. And that's the other thing I think we sometimes forget. It's like, "Oh, what's the limit of my insurance?" Well, the defense of liability insurance is really priceless. And I think we forget about it. Attorney fees are getting more and more expensive, and litigation is getting longer and longer too. So you don't want to dismiss the importance of the defense coverage within the policy.

Susan Merisko:

This really is our bread-and-butter. It's our Community Associations program. As a national program administrator, we bring decades of specialized experience managing the unique property and liability risks associations may face. We also recognize that every association is different. Governing documents, property characteristics, operations, and exposures can vary significantly from one community to the next. That's why we offer a robust multi-product approach with tailored coverage designed around the association's specific needs.

For brokers, this also means direct access to dedicated underwriters who understand the community association space and the complexities that come with it. Our program is backed by exclusively AM Best top-rated carriers. This matters because they provide the financial strength and stability you want behind coverage when a claim occurs.

So what does the solution actually include? Let's just take a few quick minutes. Our comprehensive suite of products is designed for existing and underdevelopment condominium associations, HOAs, PUDs, town-homes, and co-ops. It starts with the fundamentals: Property and Liability coverage, designed to protect the association's physical infrastructure and address third-party liability exposures. There's Directors and Officers (D&O), something every community association should not operate without. A key feature of our D&O program is defenses outside the limits, with no cap on defense costs. What does this mean? It means legal expenses don't erode the policy limits that are available for covered damages.

We also offer Crime coverage, including protection for first- and third-party fraud exposures where mandated by the association bylaws or other governing requirements.

Susan Merisko:

And finally, because the underlying limits can be exhausted so quickly today in the litigation environment we're in, our Umbrella provides that additional limit-of-liability protection at an affordable cost, and it includes the D&O follow-form.

To make the placement process as simple and efficient as possible, we built an online multi-product application and made it available on our Broker Connect portal. The CappApp, which is short for Community Associations Program Products Application, is more than just an application. It's designed to help brokers pre-qualify coverage for their accounts and submit all available products at the same time. We've added some preliminary screening questions right at the beginning of the process. So in about a minute, you can identify common underwriting knockouts before spending a lot of time on a full submission.

Of course, our underwriters prefer to quote all available lines when they can. However, we also understand that every account is different. That's why our products can also be written on a monoline basis, which gives you the flexibility to build the solution that makes the most sense for your associations. Together, our comprehensive insurance solutions deliver the protection community associations need against the unique exposures and liabilities they face, while our CappApp makes the placement faster, simpler, and more efficient. The result is that we offer our brokers a powerful combination of specialized expertise, comprehensive coverage, and streamlined technology.

We hope that this helps you win more business, serve your community associations with confidence, and deliver the right protection when it matters most.

Allie De Sieno:

This has been a great conversation and you've given everyone a lot of valuable takeaways. It looks like we are out of time, but as a reminder, we will be sending all registrants a copy of the slides, a webinar recording, and a PDF with the questions and answers from today's session. And of course, feel free to reach out directly to Barb, Susan, and Jordan, who works directly with Susan as a member of our sales team. You can find their contact information on this slide, and you can also visit our website at distinguished.com for more product information.

If you'd like us to present this topic to your team, let us know. We'd be happy to coordinate a time and tailor the conversation with your group.

If you enjoyed today's webinar, stay up to date on our latest events by following us on social media. We post about insurance market insights and industry news, and you'll learn about our latest free webinars and eBooks.

Again, thank you to everyone who joined us for today's webinar, and to our panelists, Barb and Susan. Thank you again so much for sharing your valuable insights. We hope to see everyone at our next webinar.

Community Associations Insurance

Below are additional attendee questions we could not address during the session.

Q: How much Umbrella coverage should an HOA purchase, and should larger HOAs carry higher limits?

A: The appropriate Umbrella limit depends on several factors, including the location, amenities, and size of the complex. Some venues are more litigious than others, which can increase the potential for larger settlements or jury verdicts. Amenities also impact the level of risk—for example, an association with five swimming pools may face greater exposure than one with a single pool. This list is not all-inclusive, and each association's individual risk factors should be considered when determining the appropriate Umbrella limit.

Q: Can Employment Practices Liability Insurance (EPLI) coverage be added to a Directors & Officers (D&O) policy?

A: Most associations do not have employees, so EPLI may not be necessary. However, if an association does have employees, Distinguished's D&O policy is silent on EPLI coverage, meaning it is not specifically excluded. The policy is also silent on third-party discrimination coverage.

Q: What states is this available in?

A: (Available monoline. Not all products are available in all states/territories)

Package: AZ, CA*, CO*, CT, MA, MD, NC, NJ, NV, OH, OR, PA, SC, UT, VA, WA

Express Community Association Umbrella:

All states, except GA and NY

Directors & Officers: All states, except IL

Crime: All states, except IL

(*HOA/PUD: Single-Family Homeowner Communities Only)

Q: What is the maximum TIV?

A: The maximum TIV depends on the location and risk characteristics of the association.

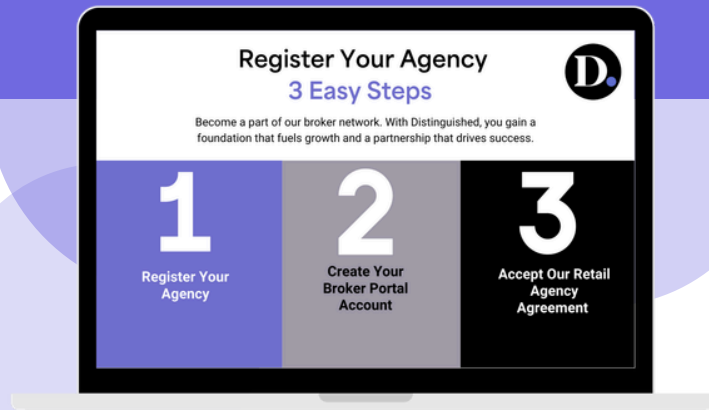
Q: What is the program appetite?

A: [Visit our website](#) or download the [highlight sheet](#) to explore our program appetite.

Q: How do I submit business?

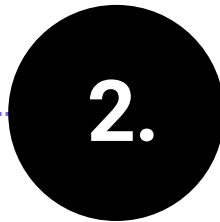
A: Submit new business through CappApp, a streamlined solution available through the [Broker Connect portal](#).

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