



# **State of Insurance: The How, the Why and the What Now?**

**Presented by**

**Charlotte Allen, CIRMS, Socher Insurance  
Angela Alonzo, Bay Area Property Services  
Colin McCarthy, Partner, Anguis & Terry LLP**

# CURRENT INSURANCE MARKET CONDITIONS





# The Current Situation for HOAs Deemed More Risky

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Insurance carriers are scrutinizing what they will write coverage for

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Some carriers are non-renewing policies they've written (in some cases for years)

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Sometimes offering only limited insurance amounts

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Some insureds are being forced into non-standard insurance markets (surplus lines)





# THE FACTORS AFFECTING GETTING A QUOTE/COVERAGE

- Loss History
- Dangerous Conditions (including older infrastructure)
- Insurable Amounts
- Open claims
- Lack of maintenance
- Electrical Panels (Zinsco, Federal Pacific, Stab-Lok)

## STANDARD CARRIERS/CALIFORNIA ADMITTED VS. NON-ADMITTED CARRIERS AND EXCESS & SURPLUS LINES

- California admitted insurance carriers
  - DOI
  - Rates and policies approved
  - CIGA
- Surplus Lines carriers
  - Freedom to rate hike or mid-term cancel, how they'd like
  - No consumer protection regulations
  - More expensive - "The Wild-West"

## What are Non-admitted Carriers and Excess & Surplus Lines? (continued)

- Different but not new
  - Policies need to be reviewed
  - May require more endorsements
  - Work with your insurance professional to gain an understanding of the policy

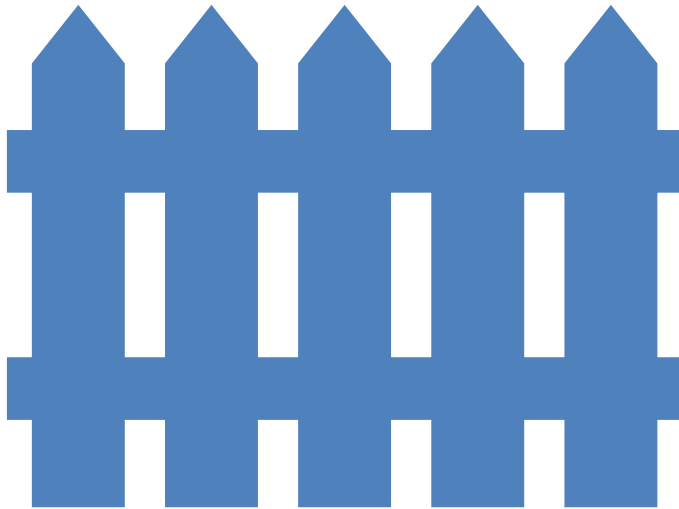
# WHAT ARE THE VIABLE OPTIONS TO PAY FOR INSURANCE?



- RAISE ASSESSMENTS NOW!
  - Increase assessments 20% AND do a 5% special assessment annually if need be



## WHAT OPTIONS DO ASSOCIATIONS HAVE?



- Pro-actively resolve infrastructure issues
  - Don't get non-renewed in the first place
- comply with Loss Control Recommendations
- Be pro-active (in general) and do everything you can to avoid loss
- Preventative communication to members
  - Where does association insurance end and HO-6/HO-3 insurance begin

## **Solutions: What Can We Do?**

- Be pro-active and address any infrastructure problems NOW
- Stay up to date with Legislative Action Groups
  - Support any calls for legislative action
- Encourage boards to contact their legislators
  - <https://findyourrep.legislature.ca.gov/>
  - Communicate about the challenges
  - Consider having a town hall and invite local leaders



# Work With the Right Professionals

## Best Practices

1. Annual Calendar: Risk Management & Insurance Renewals
  - a. Insurance Broker Interviews
  - b. Mid-Term Insurance Partner Meeting
  - c. Board's Annual Due Diligence
  - d. Maintenance
2. Insurance Claims
  - a. Tracking System
  - b. Deductible Policy
  - c. #1 Reported Claim in California
  - d. Sitting On Claims
  - e. Who Can Open a Claim?
  - f. Processing Claims
3. Funding Options



# The Value an HOA Insurance Professional Can Bring

- **Risk Control**
  - Visit the property
  - Discuss exposures
  - Ideas to mitigate loss
- **Knowledge**
  - HOA insurance experience/specialty
  - California CID laws
  - Industry current events/trends
- **Policy Language Expertise**
  - Explanation of coverage
  - Review options with the board
- **Pass on the education**
  - Board meetings
  - Letter to the community
  - Townhall style educational events (distance or in-person)



# Legal Implications for Failure to Insure

- Statutory Requirements
  - §5800 – Limit Director and Officer Liability
  - §5805 – Limit Member Liability
  - §5806 – Fidelity Bond Requirements
- Governing Document Requirements
  - Minimums stated in CC&Rs
  - Breach of Fiduciary Duty?
  - “Carve Out” or Discretionary Provisions

# Amendment to CC&Rs?

## Amend the Governing Documents to Ease Association Burden

CC&Rs Reimbursement Assessments Provisions – “shall not include paid by insurance”

CC&Rs Maintenance Provisions – Association “shall not extend to” Owner caused damage “the cost of which is not covered by insurance.”

### CC&Rs Insurance Provisions –

Walls-In to Walls-Out?

D&O and Liability Minimums by Statute

Deductibles Allocations Among Owner/Association and Respective Insurance Companies

Claims Procedures – Primary or secondary for jointly covered losses

HO6 Requirements



# Legal Implications for Failure to Repair

- Association Obligation to Repair
  - Maintenance Provisions
  - “Damage or Destruction”
    - Repair if Adequate Insurance
      - No membership vote?
      - Borrow from Insurance?
    - Minor Deficiency in Insurance Proceeds
    - Major Deficiency in Insurance Proceeds
      - Membership vote to reconstruct

# Legal Implication of Failure to Notify Membership

- Cal. Civ. Code §5810 – individual notice requirements:
- Association SHALL as soon as “reasonably practical”
  - If any of the policies described in the annual budget report have lapsed, been canceled, and are not immediately renewed, restored or replaced
  - Or if “there is a significant change” as to such policies such as a reduction in coverage or increase in deductible
- Association SHALL *immediately* notify its members if
  - There is a nonrenewal of policy listed in the annual report and “replacement coverage will not be in effect by date existing coverage will lapse”

# Questions

