

EXECUTIVE RISK INSURANCE CONSIDERATIONS FOR AFFORDABLE HOUSING DEVELOPERS

Wednesday, May 13, 1:00-2:00 PM ET

HOSTS:

Art Fatum
Strength Matters

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NeighborWorks America



STRENGTH MATTERS ANNOUNCEMENTS

Free Webinar Tomorrow at 4PM ET:

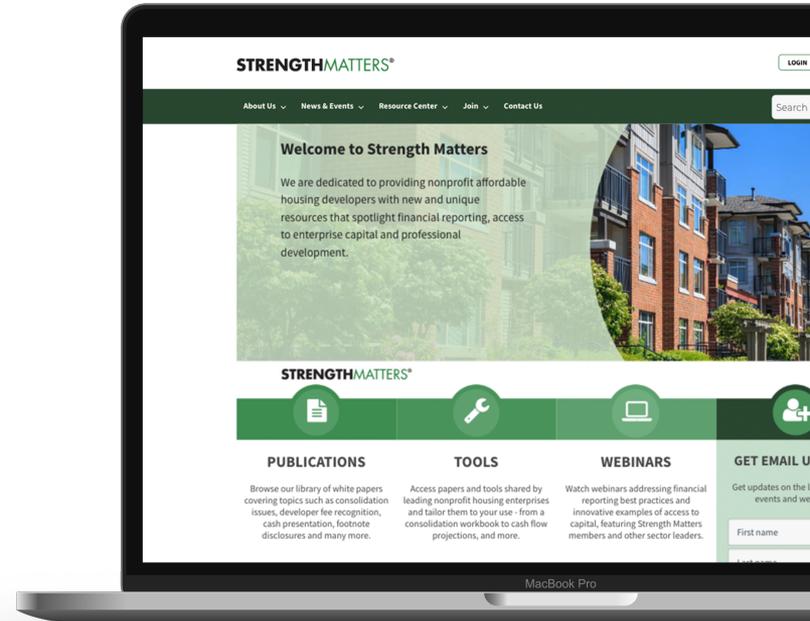
- **PPP & Other Stimulus Funds: Status and Recommendations**
 - An update on the status of PPP and other stimulus financing
 - Recommendations on dealing with compliance, record keeping, accounting and related matters
 - CFO shares their organization's plans and strategies

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- Best practice guidance on financial statements, notes, etc.
- Templates for consolidation, five-year cash flow projection, etc.



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GETTING STARTED

QUESTIONS?

- Slides and a recording of the presentation will be available in a few days. Registrants will be notified by email.
- Please use the **Zoom Q&A** feature to submit all questions.
 - *Q&A is located on the black menu bar. If menu is not visible, move your cursor to view.*
- We will pause for questions during the presentation.
- This webinar platform is “view & listen” only for participants. Presenters cannot hear participants during the webinar.

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CPE REQUIREMENTS

- **We use polls and the Zoom attendance record to verify participation throughout the webinar.**
 - Participants must submit ALL polls and be logged in by 10 minutes after the scheduled webinar start time to receive a certificate.
- **If you plan to petition your state board of accountancy for CPE credits, please submit ALL polls, INCLUDING the final evaluation.**
- To request a certificate of completion or for more information on CPE credits, **contact Lindsay Wells at consult.lwells@gmail.com.**
- Although not yet part of the NASBA Registry of CPE Sponsors for webinars, we follow NASBA guidelines in our program.

LEARNING OBJECTIVE

- Provide an overview of insurance and risk mitigants for parent level organizations

WEBINAR LEVEL: Overview

FIELD OF STUDY: Business Management & Organization

MEET THE PRESENTERS

Michael Ripley

Executive Risk Account
Executive



Mike Schwander

Executive Risk Account
Executive



Tracy Pride

Senior Vice President, Director –
Real Estate Practice



DISCLAIMER AND DISTRIBUTION CONDITIONS

- This presentation is intended as a summary only and may not include all of the coverages your individual organization may require or the policy terms, conditions, limitations, and exclusions of the coverages discussed. Please always refer to your insurance policies for specific coverage information.

COVID-19 LEGISLATIVE UPDATES: BUSINESS INTERRUPTION*

In recent weeks, state legislatures have introduced bills seeking to expand coverage under business interruption policies in response to the novel coronavirus (COVID-19) outbreak.

- *At this time, the insurance industry position is that COVID-19 is not a covered peril causing direct physical damage, thereby not triggering a business interruption loss and/or a civil authority loss.*

Most states that have introduced legislation on this subject follow the following general framework:

- Require business interruption due to the threat posed by COVID-19 to be construed as a “covered peril” under policy;
- Require indemnification of the insured for any loss of business/business interruption during a COVID-19-related state of emergency; and
- Define the policies to which the expansion applies (e.g., policies covering insureds who have less than 100 employees, policies in place during a certain time period, etc.).

Not every state has followed this model and some states deviate in important respects (e.g., application to all insureds, etc.).

* Source: Steptoe & Johnson, LLP and Council of Insurance Agents & Brokers <https://www.ciab.com/download/23428/>

COVID-19 LEGISLATIVE UPDATES: **WORKERS COMPENSATION***

In recent weeks, state legislatures have introduced **bills seeking to establish presumptive eligibility for workers' compensation claims** in response to the novel coronavirus (COVID-19) outbreak.

- While not a legislative development, California Governor, Gavin Newsom, issued an executive order that creates a time-limited rebuttable presumption for accessing workers' compensation benefits applicable to Californians who must work outside of their homes during the stay at home order. The time frame is 3/19/20 to 7/5/20.

Most states that have introduced legislation establishing presumptive eligibility for workers' compensation claims follow this general framework:

- Provides a presumption of compensability—that may be refuted by affirmative evidence—that a covered employee contracted COVID-19 during the course of employment;
- Defines the contours of who qualifies as an eligible employee (e.g., peace officers, health care providers, food service workers, etc.); and
- Clarifies the duration of the application of the provisions. Not every state has followed this model and some states deviate in important respects (e.g., application to all future pandemics, etc.).

COVID-19 LEGISLATIVE UPDATES

States Considering Business Interruption Legislation:

- District of Columbia – removed Business Interruption Provisions on 5/5/20
- Louisiana
- Massachusetts
- Michigan
- New Jersey
- New York
- Ohio
- Pennsylvania
- South Carolina

Workers Compensation Legislation & Executive Orders:

Legislation Enacted

- Alaska – 4/10/20
- Minnesota – 4/14/20
- Utah – 4/22/20
- Wisconsin – 4/15/20

Executive Order Issued

- California – 5/6/20

Legislation Being Considered

- | | |
|------------------|----------------|
| • Louisiana | • Michigan |
| • Massachusetts | • Ohio |
| • New Jersey | • Pennsylvania |
| • New York | • Vermont |
| • North Carolina | |

DIRECTORS' & OFFICERS' LIABILITY COVERAGE

Directors & Officers Liability

- Written and purchased to protect the entity, your Board of Directors and Officers.
- Acts essentially as a “Management Errors & Omissions” Policy
 - Covers claims for *financial* damages incurred as a result of a management decision
 - Most D&O Policies are written with Defense Costs within the limits of liability
 - Written as claims-made meaning claims must be reported within the policy period they occurred
 - Typically includes a Professional Services Exclusion
- Important to obtain coverage for General Partnership Liability as a standard Non-Profit D&O form will not provide coverage to For Profit entities.



INVESTMENT ADVISOR PROFESSIONAL LIABILITY COVERAGE

- This Professional Liability Insurance defends and pays damages for the potential loss in the value of assets belonging to your investors.
- Written in conjunction with Directors & Officers Liability Policies due to the professional services allegations often overlapping or being brought in tandem with D&O allegations. D&O policies contain Professional Liability Exclusions.
- Written as claims-made meaning claims must be reported within the policy period they occurred
- Activities/Allegations to be considered “Investment Advisor Management”
 - Mismanagement of assets
 - Misrepresentation made in the PPM or other communication to investors or potential investors
 - Failure to provide adequate disclosure of the investment risks involved
 - Failure to properly value assets
 - Key triggers for needs of coverage are charging fees for management of money or hopes for returns on investments

Adding this coverage to D&O policies results in an increase in premium and retentions.

EXECUTIVE RISK / MANAGEMENT LIABILITY COVERAGES

Employment Practices Liability (EPL)

- Types of Claims Covered by EPL
 - Gender or Racial Discrimination and other protected classes such as color, religion and national origin
 - Failure to Promote
 - Sexual Harassment (#MeToo)
 - Hostile Work Environment
 - Retaliation/Whistleblower
 - Wrongful Termination
 - American Disability Act
- Most EPL Policies are written with Defense Costs Within the Limits of Liability.
- Typically written as claims-made meaning claims must be reported within the policy period they occurred.
- Recommended to include Third-Party EPL which provides you with discrimination coverage to non-employees. (Tenant Discrimination, ADA Claims may be considered)
- Actual Damages as a result of a Wage & Hour Claims are typically not covered. You may receive a sub-limit for defense costs only.

EXECUTIVE RISK / MANAGEMENT LIABILITY COVERAGES

Fiduciary Liability

- Protects a businesses' and employers' assets against fiduciary-related claims of mismanagement of a company's employee benefit plans as defined by ERISA. Often the Fiduciary of the plans can be found personally liable for errors.
- Written as claims-made meaning claims must be reported within the policy period they occurred.

Crime Insurance including coverage for Guest Property & Social Engineering

- Coverage for employee theft of money, securities, or property.
- Guest Property endorsement adds coverage for employee theft of a customer's property.
- Social Engineering Coverage – provides coverage for the voluntary parting of money by an employee to a third-party as a result of that employee being tricked or fraudulently induced into the transfer of those funds.
- Written on a Discovery or Loss-sustained basis. Discovery wording is preferred.

CYBER / DATA PRIVACY INSURANCE

Truly becoming an enterprise risk management issue. Coverages Include:

FIRST PARTY COVERAGES

- Crisis Management Event Expenses
- System Failure
- Funds Transfer Fraud
- E-Commerce Extortion
- Business Interruption
- Dependent Business Interruption
- Security Breach Remediation & Notification Expenses
- Computer Program & Electronic Data Restoration Expenses
- Ransomware
- Bricking

THIRD PARTY COVERAGES

- Network & Information Security Liability
- Communication and Media
- Regulatory Defense Expenses
- PCI Liability
- TCPA defense (sublimit)

- Valuable risk management tools & training are usually available to you at no additional cost
- Written as claims-made meaning claims must be reported within the policy period they occurred

ERRORS & OMISSIONS

Errors & Omissions Policies are written to cover professional services provided to others for a fee.

- Types of Errors & Omissions Policies typical to Affordable Housing Providers:
 - **Property Managers Professional Liability** – Coverage for claims alleging negligence or error in the provision of property management services
 - **Construction Management Professional Liability** – The management, coordination, and supervision of the design and construction process
 - **Developers Errors & Omissions** – Provides Defense and Damages to a Developer that they become legally obligated to pay because an alleged breach of duty, error or omission of their services as a real estate developer

ERRORS & OMISSIONS COVERAGE GUIDELINES

Coverage	Property Managers E&O	Construction Managers E&O	Developers E&O
Owned Properties	No (unless endorsed)	No	Yes
Unowned Properties	Yes	Yes	No (unless endorsed)
Contingent BI/PD	No (unless endorsed)	Yes	Yes
Pollution	No	Often	Yes
Tenant Discrimination	Often	No	Often
Covered Services			
Development	No	No	Yes
Property Management	Yes	No	Yes
Construction Management	No (unless endorsed)	Yes	Yes
Real Estate Brokerage	No (unless endorsed)	No	Yes

MANAGEMENT LIABILITY AND THE POSSIBLE IMPACTS OF COVID-19

D&O/Property Management E&O

- Mergers & Acquisitions. We are already seeing litigation relating to deals failing to close as a result of the pandemic and should expect to see post-deal escrow and earnout disputes.
- Bankruptcy/creditor litigation. Unfortunately, the pandemic is leading to companies not being able to pay their bills or recapitalize, leading to bankruptcy.
- Wrongful death actions filed by customers/clients.

Employment Practices Liability

- Wrongful death or personal injury claims from employees exposed to COVID-19 on the job, as the alleged result of improper precautions taken by the employer.
- Failure to pay wages or severance due to distressed company's inability to pay.
- Discrimination against employees during the re-hiring process

IRMI INSURANCE AND RISK MANAGEMENT GLOSSARY

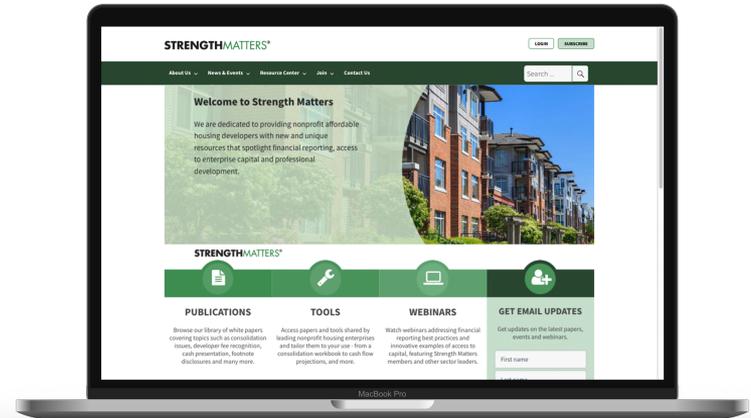
The International Risk Management Institute, IRMI, provides a cost-free insurance and risk management terms glossary. This resource can be found at the following link:

[IRMI.com/glossary](https://www.irmi.com/glossary)

FINAL QUESTIONS?

- Please use the **Zoom Q&A** panel to submit questions.
- Presenters will remain on the line to answer remaining questions.

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EVALUATION POLL

- Please complete the **Evaluation** in the **Polling panel** and **click Submit** when finished.
- **CPE CREDIT**: If you plan to petition your state board of accountancy for **CPE credit**, you must **complete and submit ALL polls, INCLUDING this Evaluation**.
- This poll will remain open for 10 minutes.

THANK YOU FOR PARTICIPATING!



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