

NYS Federation of Lake Associations, Inc.

Lake Insurance Workshop

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Disclaimer: This information is not intended to provide legal or insurance advice. Always check with your attorney or insurance agent before making decisions. This material is intended for general education. The author is not responsible for errors, omissions or mistakes of any nature.

1. For what risks do we need insurance? Do I really need insurance?

A. What's my risk exposure?

1. **unincorporated association** – technically, only the people who operate it or have some control over its affairs, have exposure
2. **corporation** – yes, a corporation has limited liability, but anyone who is on the Board of Directors, or who participates in the management of the corporation, will have exposure.
3. **other-** any time you participate, you take on some exposure
4. **Is my home really at risk?** Yes, unlike some states (Florida), only a small portion of your home's equity is protected from creditors; if the home is jointly owned with spouse ("tenants by the entirety"), however, creditor will find it very difficult to sell it. Or if you only have a life estate, it's not too attractive to creditors. Family limited partnership has also been used. Irrevocable trusts.

B. Who can sue me?

1. Someone injured at your property, even if they are trespassing
2. NY law re: recreational property – don't count on this to protect you
3. The broad concept of "proximate cause." If your conduct could reasonably be expected potentially to cause an impact to another person, then you owe them a duty to act in non-negligent fashion.
4. Your own members
 - A. Breach of fiduciary duty / self-dealing – even if the victim's attorney doesn't sue you personally, your own members might
 - B. Negligence
 - C. Wrongdoing
5. Some "worst case" hypotheticals
 - A. Drowning or serious injury at the beach
 - B. Drowning or serious injury off a boat in the lake
 - C. Criminal attack on your association's premises
 - D. Slander claim

C. Types of Insurance

1. Personal injury claims – death or injuries to the person
2. Property loss or damage – if your property is lost or destroyed
3. Claims for damage to others' property – you caused them a loss
4. General liability – all of the above
5. Errors and Omissions “E & O” – this covers mistakes and theft
6. Directors and officers “D & O” – do you need it if you have General Liability policy? The problem is, you can't generally get General Liability anymore.
 - A. What's covered? Claims against director(s) arising from operation of the enterprise
 - B. What's not covered? Usually claims by employees; environmental; slander and libel; dishonesty
7. “Fringe” stuff – sexual harassment; slander and libel, flood, pollution

2. How much insurance should we buy?

- A. The usual policy is \$1 million
- B. The “usual” might not be enough in the even of a catastrophic claim. These days, a life can go for over \$10 million. A permanent disability can be even more. One recent case, where the death was particularly gruesome, saw a \$23 million verdict.
- C. The marginal price goes down as you buy more.

For example, one of our associations has a \$1 million General Liability policy (per occurrence.) It will cost them \$2,164 this year. To increase that policy to \$5 million, the premium will be about \$6,250. Five times as much insurance for about triple the premium.
- D. Consider that your existing homeowners insurance **may (CHECK YOUR POLICY!)** already provide you with coverage for most liabilities, including off-premises. This covers you against lawsuits for bodily injury or property damage that you or family members cause to other people. The liability portion of your policy pays for both the cost of defending you in court and any court awards – up to the limit of your policy. You are covered not just in your home but anywhere in the world. Liability limits generally start at about \$100,00. However, experts recommend that you purchase at least \$500,000 worth of protection. Some people feel more comfortable with even more coverage. Note that there are lots of exclusions, e.g. intentional acts; acts arising from business activities (don't accept pay for your volunteer work!); failure to render professional services; use of a vehicle. One exception is of special interest:

Policy usually does not cover liability if you are sued for a boating accident involving (a) motor boat over 25 hp; sail boat over 26 feet; jet ski. These are usually NOT covered.

E. Personal “umbrella” liability policy – You can purchase an umbrella or excess liability policy which provides broader coverage, including claims against you for libel and slander, as well as higher liability limit. This covers almost everything; up to \$5 million is offered today; a \$1 million dollar policy would be about \$250-\$500/year.

3. How and where can we get insurance?

A. Agents – most don’t write this “specialty product” You may need to plan for the possibility (now or in the near future) that you will not be able to get insurance, at any price.

B. What else can I do to protect myself any my home?

1. Homeowners Insurance – purchase additional liability coverage, perhaps as cheap as \$50 a year for additional \$1 million coverage. This is called “Coverage F – Personal Liability and Coverage G – Medical Payments to Others” under the standard HO-3 NY homeowners insurance policy. If you have 10 active members/directors, this might be an easy way to get \$10 million of coverage.

2. Restructure your association’s affairs

- A. Hire independent contractors with their own business insurance
- B. Make sure you SEE some proof of insurance
- C. Form a park district and go under the town’s coverage
- D. As a group, address the question now a to who has exposure, and address how to deal with it.