

## Insurance obligations

**Q** Our board will not provide insurance for common areas because they say it isn't needed, and it's expensive. Can homeowners independently insure their association common areas?  
—WEST VIRGINIA

**A** The first place to check is the governing documents. It's conceivable, especially if it's a smaller or an older community, that the governing documents don't address the topic of insurance. This would mean that the board is relying on the "silence" of the governing documents to say it does not have an affirmative obligation to insure the common areas.

When governing documents are silent, the next step is to look at applicable law. Community associations in West Virginia created as of 1986 are governed by the state's Uniform Common Interest

Ownership Act. This mandates that communities maintain, to the extent available, property damage and liability insurance. In fact, if such insurance is not "reasonably available," the association is required to provide the owners with notice of that fact.

Perhaps, in this case, the board has found that insurance is not "reasonably available" to this community. That could be the case if it has an extremely high loss history, or if the community is structured in a way that it has some uninsurable aspects.

Assuming that this is a typical residential common interest community subject to the state act, the board would have to procure these two types of coverage for the common area even if the coverage is "expensive." And in reality, it should be. If someone were to get injured on the common area and sue the association, the liability exposure could be quite large.

If the board doesn't procure this coverage, theoretically, a unit owner could

attempt to do so on the association's behalf, but it wouldn't be easy. The insurer would want to know that the policyholder has the authority to enter into the policy and the means to pay the premiums. It's doubtful that a lone homeowner would be able to demonstrate proof of requisite authority to insure the common areas or have the ability to pay premiums annually.

The better alternative would be for the membership to conduct a meeting to approve the coverage and attempt to present the authority as a duly adopted resolution, conducted in conformance with the governing documents.

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**Got a question?** Write to "Ask the Experts," Common Ground, 6402 Arlington Blvd., Suite 500, Falls Church, VA 22042. Email: [commonground@caionline.org](mailto:commonground@caionline.org). Due to the volume of questions we receive, we regret that we cannot reply to each question individually.



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