

COMMON ACTIONS CAN BE CAUSE FOR CONCERN

Community Associations are designed to provide an opportunity for individuals to live together and share communal spaces that otherwise they would not have access to. However, in sharing communal property, disagreements or misunderstandings may arise as to what is communal property versus what is private property. This can lead to claims under the D&O policy for intentional acts such as invasion of privacy, trespass or wrongful entry.

Case Example:

After a bad storm, the Community Association Board assessed the damage to the Community. In its inspection of the premises, it found that some trees had been damaged and were creating a dangerous condition. Thinking the trees were on communal property, the Landscaping Committee hired a contractor to remove any damaged or dead trees to prevent them from falling to the ground and causing injury to a passerby or property damage. After removing the trees, a homeowner made a complaint stating that the trees removed in front of his home were on his property, not communal property, and that, therefore, the Landscaping Committee committed trespass. To prove trespass, all one must show is that their property was entered without permission.¹ Even though the Landscaping Committee believed that the trees were on communal property, its actions still constituted trespass. In addition, as there was property damage, this matter impacted both the D&O and GL policies. The homeowner received \$125,000 as a settlement, which reflected the cost of purchasing and installing replacement trees, as well as attorneys' fees.

Thought Corner: When in doubt, the Community Association Board should confirm whether property is part of the association's communal property or within a homeowner's property line, before entering.

Endorsed by:



Underwritten by:



Administered by:



¹<https://www.law.cornell.edu/wex/trespass>