

NAR Insurance Program

QUARTERLY TREND REPORT

Q3 2021

SUMMARY: Association claims activity increased 66 percent compared to Q3 2020. Member challenges to association governance decisions continue to top the list of claims made, with employment matters a close second. Nationwide, cyber threats remain a significant financial, reputational and logistical risk to all business organizations.

The NAR Insurance Program provides professional liability and limited patent coverage to all eligible associations, affiliates, and MLSs.

MARKET INSIGHTS + TAKEAWAYS

RESILIENT WORKFORCES:

With 81 percent of companies updating their remote work policies, insurers are focusing on how employers are managing the return to office and remote work arrangements, as well as diversity, equity and inclusion (DEI) efforts.

TAKEAWAY: Work with employment counsel to review and update your association's employment handbook to ensure it sufficiently addresses COVID-19 related issues, such as vaccination or testing requirements, enhanced safety measures and remote work, as well as processes to address inter-employee conflict resolution. Check out the Resources list for additional guidance.

FUTURE PLANNING:

The pandemic was not previously considered a top-10 risk by the majority of organizations, and exposed weaknesses in risk management planning. Organizations across all industries are strongly urged to make risk management a critical business priority.

TAKEAWAY: Make risk assessment and disaster planning part of your association's annual planning. Start by creating a [disaster preparedness plan](#) that addresses natural disasters, cyber attacks, and other events that could disrupt business operations and the provision of member services.

INTELLECTUAL PROPERTY:

For the first time in five years, patent litigation in the US increased year over year. This was largely driven by software-related claims and non-practicing entities (aka patent trolls), along with companies' efforts to develop new software and information technology.

TAKEAWAY: Be sure agreements with technology vendors such as those for MLS services, mobile apps and websites include indemnification for patent infringement claims, and consider budgeting for excess patent infringement insurance for the 2022 policy year.

Source: Aon, NAR's broker for the NAR Insurance Program, professional liability trends across market sectors.

RESOURCES

[Employment Practices Legal Hotline](#)

[Diversity, Equity and Inclusion Resources](#)

[Employer/Employee Guidelines](#)

[Code of Conduct and Anti-Harassment Policy](#)

[Best Practices for Conducting Internal Harassment Investigations](#)

[Human Resources Toolkit](#)

[Strategic Association Management Services](#)

RISK MANAGEMENT WEBINAR

Employment Practices to
Avoid Liability

December 9 // 2:00 pm CDT

[REGISTER NOW!](#)

CLAIMS REPORTED: 15

(10 active demands/lawsuits
and 5 potential claims)

5 Association Governance

3 Employment

2 Antitrust

2 Professional Standards

2 Other

1 Copyright

INSURANCE TIP

2022 insurance program renewal information is coming in early January to your physical mailbox and your email inbox. Start planning now for any excess insurance needs you may have in the new policy year.

NAR Insurance Program

QUARTERLY TREND REPORT

Q3 2021

TIPS FROM THE FIELD

One of the most frequently asked questions about insurance coverage is, “do we need to report this?” It’s an important question because insurance companies may deny coverage if a claim is not timely reported, as noted in the “Market Insights + Takeaways” [last quarter](#).

The safest answer is that any time a credible threat is made, that could result in a demand or a lawsuit against the association (or any covered person), it’s a good idea to report it as a potential claim to the insurance company. Common examples of potential claims include a respondent in an ethics case threatening litigation if they’re found in violation, or an employee emailing the board of directors about their resignation with insinuations about a toxic work environment.

Reporting a potential claim does not cost anything, and does not trigger a deductible or any financial obligation. On the plus side, reporting a potential claim establishes a notice date, so that if a claim later develops, the association may be able to claim its legal expenses relating back to the initial notice date (subject to the applicable deductible). In fact, many claims reported to the NAR insurance policy do not result in an active demand or lawsuit; of the 13 claims closed in September 2021, six were closed because the claimant never pursued the matter.

For patent matters, the RPX policy requires reporting of any patent incidents including assertion letters, offers to license patents, indemnity requests, and litigation. Failure to report a pre-litigation incident may result in a denial of coverage.

BEST PRACTICES:

- Report a lawsuit, regulatory inquiry or complaint, request for indemnity, or any other legal proceeding immediately to the insurance carrier.
- Report written demands received from a potential claimant or legal counsel. Demands are not limited to monetary demands, and could include a demand to take or not take a certain action.
- Report credible oral threats of legal action or volatile situations that could result in legal action as potential claims.
- Seek the advice local counsel about any claim or potential claim.
- When reporting a potential claim, include: (1) the substance of the threat (whether oral or written); (2) who made the threat; (3) when the threat was received; and (4) any written correspondence the association received relative to the threat.
- Follow the specific [instructions for reporting a claim](#), based on the type of claim you’re reporting: cyber, crime loss, [patent](#), or all other (including professional liability and employment matters).