

NAR INSURANCE PROGRAM

QUARTERLY RISK REPORT

Q4 2022

IN THE SPOTLIGHT:

GOVERNANCE AND BOARD LEADERSHIP

As many associations welcome new board members at the turn of the year, now is a good time to review and remind the association directors about their fiduciary duties, association policies (e.g., antitrust compliance, anti-harassment, and conflict of interest), board procedures, and the basics of good sense governance.

An excellent way to prepare board members for their role is providing annual orientation which covers matters such as a director's role in overseeing the association's operations, the business judgment rule, and their fiduciary duties to the organization.

As a reminder, coverage under the NAR Insurance Program is dependent on the association or MLS adopting all mandatory NAR policies, as well as adhering to the association's bylaws and policies. This means the [association and its board](#) must act in accordance with the association's governing documents and applicable state and local laws. Examples of such actions include:

- Providing adequate notice. Taking action at an improperly called board meeting, such as failing to provide proper notice or acting without a quorum, can be invalidated by a court if the action is challenged.
- Acting in the best interests of the association and its members. The board of directors are required to avoid and disclose any conflicts of interest.

YEAR IN REVIEW

59 claims were filed on the NAR Insurance Program in 2022, with a stunning **40% of claims** arising from **employment practices**. As we begin a new year, set aside time to brush up on best practices and current trends to get out in front of potential employment claims. Here are some great places to start:

[Trending Employment Law Issues Webinar](#)

[EPL™ Assist Program](#)

[Quarterly Risk Report on Sexual Harassment](#)

In addition, take advantage of the HR consulting services offered by the professionals at NAR's [Strategic Association Management](#) program.

- Acting with a duty of care. The board is required to act with reasonable diligence and prudence which means staying engaged, being informed and relying on professionals.

Take steps now to empower and enable the board to protect the interests of your association and its members, make good and informed decisions, and avoid liability claims. Check out NAR's [Board of Directors Orientation Toolkit](#) for customizable presentations.

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

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BEST PRACTICES FOR PRODUCTIVE BOARD MEETINGS

- Follow the procedures set forth in your bylaws and policies and comply with all legal requirements when conducting board meetings.
- At the beginning of each board meeting review and remind the board about policies such as antitrust compliance and conflicts of interest.
- Set and follow an agenda for all meetings, take accurate, concise minutes and consider asking counsel to review the minutes before finalizing.
- Engage a parliamentarian to ensure association board meetings are conducted properly and efficiently, especially when significant business will be decided.
- Provide annual anti-harassment and diversity, equity and inclusion training for board members.
- Establish roles and expectations of association leaders and professional staff to ensure efficient and effective management of the organization.

FINDING YOUR ROOTS

Does your association have a milestone anniversary coming up? The archivists in the NAR Library and Archives can assemble an [association history](#) to help you, your board, your members and your community learn more about your association's history and its impact on the community. Contact [Heather McGowan](#), NAR Archivist and Digital Preservation Librarian, to get started.

NAR RESOURCES

[Good Sense Governance Webinar](#)

[Good Sense Governance Resources](#)

[Principles of Association Volunteer and Staff Leadership](#)

[President/Chief Executive Task List](#)

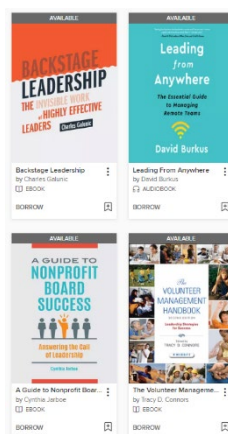
[Disclosure and Conflict of Interest Policies](#)

[Antitrust Compliance Statement](#)

[Code of Conduct](#)

[Fiduciary Duties video](#)

BOOK COLLECTION: BOARD LEADERSHIP



The NAR Library & Archives has compiled [a collection of eBooks about board leadership](#), building successful boards, and non-profit board service to help you expand your knowledge and excel in these areas. Share this valuable collection with your board members and remind them that they have access to these books, and many more.

To access these eBooks, and the entire NAR library collection, log in to NAR's [eBooks site](#) using your NAR Member ID. Be sure to select "National Association of REALTORS®" as your primary library in the drop-down menu on the sign-in page.

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EPL TIP

How can an association that allows flexibility in its employees' remote work remain compliant with employment laws?

It's important to be intentional about remote work and plan how to address compliance obligations before they arise. Employers should have a remote work policy in place and communicate that to employees. For instance, an employer can choose if and where it will allow remote work, require an employee to tell the employer where they're working.

Then, have a plan to address labor and employment obligations in the state(s) where employees are authorized to work. Requirements vary by state for unemployment insurance, workers' compensation, overtime exemptions, wage payment rules, mandatory training, paid leave, taxes and more. Remember, the employer is responsible for ensuring compliance with each state's laws where it has workers.

This employment practices tip, and dozens more, are available to you on the [EPL Assist™ website](#). Be sure to take advantage of this [valuable benefit](#), which provides policy templates, sample documents, risk management resources, and advice and counsel on common employment law issues facing associations.

COVERAGE CORNER

ADDRESSING COMMON POLICY QUESTIONS



Does the policy cover board members when they make a decision, even a bad decision?

A:

Yes, directors and officers are covered for "wrongful acts" as defined in the policy. But there's a caveat. If the board acts with knowledge that its actions violate the law, or are fraudulent, criminal, or malicious then coverage would be revoked upon adjudication of such conduct.

Have coverage questions?

Check out these [Professional Liability Policy FAQs](#).



RISK MANAGEMENT WEBINAR

THE IMPACT OF DEI ON RISK MANAGEMENT

MARCH 23 | 2:00 PM CT

REGISTER NOW!