

Oakmont Residents Guide to OVA Insurance Coverage

Frequently Asked Questions

(prepared by A.J. Scott – Cline Insurance)

February 21, 2020

1. What does OVA's insurance cover?

OVA's master insurance is written to protect the *Oakmont Village Association and its members* for those risks inherent to the **ownership, maintenance, and repair** of the recreational facilities. If *the Association's* negligence results in bodily injury or property damage, OVA's master insurance will pay to defend and indemnify the Association and its officers, directors, employees, volunteers, *and members*, subject to the policy terms and conditions.

2. Are the clubs/ recognized groups covered?

No – only the parties listed above are *affirmatively* entitled to coverage under the Association's insurance (per policy forms). There is no language in the policy that overtly names the groups as "insureds," and adding such language to the current policy could require us to underwrite the activities of all 160+ groups and have them approved by the insurer – but since the clubs operate independently of OVA supervision/ regulation, it is unlikely that the insurer would agree to take responsibility for them.

Please note that this is not a recent development but is in keeping with the coverage OVA has historically maintained for many years. (Please refer to the "Recognized Group Criteria Summary Policy," which was last revised in 2005. This document states that "*being recognized does not confer upon the groups any special protection. For instance, OVA's insurance policies do not cover recognized groups.*")

3. What about club members individually?

If a club member is individually named in a lawsuit **arising from the conduct of the Association's business** (the ownership/ maintenance/ repair of the community facilities), then that person will be afforded protection under the Association's policy as long as he or she is an OVA member. The Association's master policy specifically extends **insured status** to "any of *your* members, but only with respect to their liability for *your* activities or activities they perform on *your* behalf." (*your* = OVA's)

4. Can we run through a few scenarios to illustrate how OVA's coverage may or may not apply?

Certainly! But first, an important thing to understand about liability insurance is that it covers specific *parties* (that is, people and organizations) rather than specific *situations*. The policy will pay to defend these insured parties against any claim that is not excluded in the policy language. IF they are determined to be legally liable for a third party's bodily injury or property damage, then the policy will pay the applicable judgment or settlement to that third party on the insured's behalf.

Regardless of the circumstances, the policy will not pay to defend a person or organization that is not an "insured" under the policy. Therefore, *for insurance purposes*, the question after an accident is not so much "what happened?" or "who is responsible?" but "who is being sued?" or "from whom is the injured party seeking recovery?" In the vast majority of conceivable scenarios, this is likely to be Oakmont Village Association – OVA is likely the most obvious and attractive target for a suit since it is a corporation (a formal legal entity), has significant assets (and insurance coverage), and owns the property upon which the accident is likely to have occurred. And of course, if OVA is named in a lawsuit, or if an OVA officer, director, employee, volunteer or member is named in a lawsuit *with respect to OVA activities or activities they performed on OVA's behalf*, then OVA's insurance will step in, so long as the suit does not trigger some exclusion in the policy.

With this in mind, here are some possible examples, subject to the following disclaimer: It's not possible for us to guarantee, in advance, that coverage will apply to *any* hypothetical claim scenario, as actual events have countless variables, and insurance policies are complex contracts, with detailed terms, conditions, limitations, and exclusions. Every real-life claim must be evaluated individually against the policy provisions (by a professional, licensed claims adjuster) to determine coverage.

Example 1 – At a club event, the condition of the premises causes an injury. (For example, an attendee trips over uneven concrete just outside the Berger Auditorium.) The injured person sends a demand letter to OVA, the Club, and the Club President.

We call this a “premises liability” claim, and it is precisely what Oakmont’s insurance is for. In this scenario, OVA’s master policy could be expected to cover the defense costs of the Association and the Club President (presuming he or she is an OVA member), since the President is being sued “with respect to their liability for OVA’s activities” (again, these being the ownership/ maintenance/ repair of the premises). Since the Club itself is not an “insured” under OVA’s policy, the Club would need to put its own insurance on notice (if applicable), or, if it had no insurance, may need to retain its own defense attorney *if the charges against it were not dropped or dismissed* – but it seems unlikely that the Club could have any legal liability for this injury.**

Example 2 – At a club event, a vendor’s negligence causes an injury. (For example, a DJ hired for a dance leaves a cord running across a hallway, and someone trips on it.) The injured person files suit against the vendor, OVA, and the Club.

While it’s extremely likely that OVA’s policy *would* cover the Association (and its members) for this claim, it would be far preferable to have the *vendor’s* insurance fund the consequences of this accident, since they caused it – this is why it is important to require vendors to provide proof of insurance naming the Club *and* OVA as Additional Insureds. If you do this, then the vendor’s insurance will pay any costs to defend this claim and any settlement or judgment that may result from it, and neither OVA nor the Club will have to submit a claim to their own insurance.

Example 3 – A club’s activities result in an injury (or *offense*). (For example, a club is accused of discriminating against prospective members.) The injured person threatens to sue the Club and its Board.

Since this claim is unrelated to OVA’s activities (the ownership/ maintenance/ repair of the premises), the Club would need its own insurance, or it would need to retain its own defense counsel.

5. So what measures can/ should each group take to protect themselves & their members?

Any group that is concerned about a lawsuit arising **from activities *unrelated* to the Association’s business** (that is, arising from something *other than* the ownership/ maintenance/ repair of the community facilities) should consider obtaining insurance for their operation(s). This would ensure that coverage is written specifically for the group’s events or activities AND that it provides coverage to the relevant parties (tailored to protect your group and its members).

Please note that OVA’s master insurance policy does not require the clubs/ groups to have their own insurance. The Association, however, may have requirements regarding which groups and/or events must be insured – for a detailed listing, please refer to the “Facility Use Policy & Facility Fee Schedule” (also titled “Oakmont Group Activities and Conditions for Facility Use”), which is available on the website or through the OVA office.

If you are contracting with vendors/ third-party service providers (such as a caterer, bartending service, A/V company, shuttle driver, etc.) for your event, a possible alternative to obtaining your own insurance might be to require these businesses to provide evidence of insurance and name your organization (and OVA, if required) as additional insured under *their* insurance coverage.

Finally, a qualified attorney could provide an opinion regarding the effectiveness and advisability of requiring participants to sign waivers or hold harmless agreements before an event.

Here are some suggestions specific to certain types of activities:

A. If your group provides exercise classes:

Whenever possible, hire an instructor who maintains his or her own insurance, and if your group is a formal entity*, ask the instructor to name it as an additional insured under his or her policy. We would also tend to think that waivers/ hold harmless agreements might be desirable for these activities, to remind members and guests that they are participating at their own risk, but again, an attorney can provide better insight regarding this.

B. If your group ever provides transportation:

If you are using a shuttle service (recommended if feasible), verify that the company is appropriately licensed and insured, and request a proof of insurance naming your group as additional insured if possible.

If you are using volunteer drivers, confirm that their licenses are in good standing, and consider obtaining a 1-day event liability policy that includes non-owned auto liability coverage. Consider discussing with an attorney whether waivers or hold harmless agreements might be advisable.

C. If your group coordinates off-site activities (but does NOT provide transportation):

Depending upon the nature of your event/ activities, and the nature of your group itself*, you may still wish to obtain a 1-day event liability policy (or, if you conduct these events often enough, perhaps an annual policy for your group that will cover your activities throughout the year). Alternatively, you can discuss non-insurance options with an attorney.

D. If your group hosts athletic tournaments/ competitions:

We strongly recommend obtaining a 1-day event liability policy written specifically for your event (or, if you conduct these competitions often enough, perhaps an annual policy for your group that will cover the events throughout the year).

E. If your group serves alcohol:

- a. **For free** – the Association may not require you to obtain insurance, but you might still discuss your group’s exposure with an attorney if you are concerned. Should you decide to purchase a General Liability policy (or an event liability policy) for your group, it’s very likely that that policy will *automatically* cover this incidental exposure (under “host liquor liability”), with no need to purchase separate or additional “liquor liability” coverage.
- b. **For a charge** – we strongly recommend, and the Association will likely require that you obtain your own insurance, including liquor liability coverage, OR that you hire a licensed bartending service with their own insurance, and allow them to handle all beverage sales & service. The reason for this is that virtually all General Liability policies (OVA’s included) exclude claims arising from intoxication, furnishing alcohol to minors, or any statute/ ordinance/ regulation relating to alcoholic beverages **IF** the insured is “*in the business of manufacturing, distributing, selling, serving, or furnishing alcoholic beverages.*” In other words, any event requiring a liquor license and/or involving the sale of alcohol – or a ticket price that includes a certain number of drinks with admission – will likely trigger this exclusion. On the other hand, “host liquor liability” coverage for BYOB-style events, or events at which alcohol is served but not charged for, is characteristically covered under a standard General Liability policy.
- c. **We don’t serve it, but we allow our members and guests to bring their own** – same as item a., above but double-check with your agent or broker that the “host liquor liability” extension includes BYO events.

F. If your group hosts concerts, performances, movie screenings, etc.:

Request evidence of insurance from all vendors (including caterers, A/V personnel, etc.) as applicable, and ask them to name your group (and OVA, if required) as additional insured. If their operations cause injury or property damage to a third party or to the Association, *their* insurance – not your group! –

should be held responsible. (For example, if a vendor runs a cable across a hallway, causing someone to trip and injure themselves, that vendor's insurance should answer the ensuing claim.)

G. If your group hosts educational events:

Unless your event will draw a disproportionate amount of public traffic (non-members) into OVA, it's unlikely that you should be required to obtain your own insurance for this type of gathering. The predominant exposure here is the premises liability (possibility of a slip & fall), which should be addressed by the Association's coverage.*

*Keep in mind that if a given club or group is not a formal legal entity (just an informal group of people meeting together voluntarily), then an injured party would have difficulty bringing a lawsuit against that group – there are likely no assets to go after. (And since membership in the club is voluntary, it seems that any judgment beyond the group's current bank account balance (if one exists) would be challenging to enforce!**) Instead, for events occurring on OVA premises, it's more likely that the injured party would bring suit against the Association, and OVA's master insurance would then respond, subject to the terms, conditions, and exclusions set forth in the policy.

For events occurring elsewhere (NOT on Association premises), even though the OVA's General Liability coverage does not contain a "limitation of coverage to designated premises" endorsement, it seems unlikely that the Association's coverage would be triggered by an off-site injury. Since OVA is not directly involved with the groups' activities and does not exercise any oversight or risk controls with regard to their day-to-day operations, it seems it would be difficult to assert that the Association was in any way liable for an accident occurring off-site.

***Please note that these comments are provided as a courtesy and do NOT constitute legal advice! For a professional legal opinion on any of these topics, please consult a qualified attorney.*

6. Who can I contact for more information about event insurance, or obtain a quote?

Various local insurance providers may offer such insurance for your event.

For questions specific to OVA's master insurance, please feel free to contact Cline Agency Insurance Brokers at (800) 966-9566, ext. 28. Please note that Cline Agency specializes *exclusively* in insuring common interest developments (community associations) – so they will not be able to provide event insurance quotes directly, but they are always happy to answer questions about what the Association provides or to discuss coverage directly with your broker of choice!

This document contains only a general description of coverage and is not a statement of contract. For a detailed description of the policy terms, conditions, limitations, and exclusions, please consult policy itself.

IMPORTANT: The information provided is intended to inform, but it does NOT constitute legal advice. Please consult with a licensed attorney for a more authoritative opinion on any legal matter addressed in this document.