

FAHROgram

FLORIDA ASSOCIATION OF HOUSING AND REDEVELOPMENT OFFICIALS

May/June 2016

President's Message

ED Forum Provides Updates, Opportunities to Connect and Plan

When you read this edition of the FAHROgram, we will have recently returned from the FAHRO Executive Directors' Forum held in St. Augustine, April 27-28. This unique event offers executive directors from around our state the opportunity to come together and discuss current housing topics. We also held the association's April board meeting in St. Augustine.

This year, the ED Forum served as a planning session for the first-ever FAHRO Housing Summit. We plan to host the Summit this summer at the conclusion of the

2016 FAHRO Annual Convention and Trade Show in Orlando.

In addition, the ED Forum covered the latest updates regarding the proposed re-federalization of Central Office Cost Center (COCC) funds under Asset Management, policy proposals for the implementation of the Moving



Miguell Del Campillo

See **PRESIDENT'S MESSAGE** on page 3

2016 Legislative Session

Session 2016: A Great Year for Affordable Housing

by Oscar Anderson, FAHRO State Affairs Consultant

The Florida Legislature adjourned *sine die* on March 11, with little controversy for the first time in over a year. According to my car log, this meant the end of 15 months of almost nonstop legislative activity in Tallahassee—literally I traveled to the capital city on 31 different occasions for committee weeks, regular session or special sessions over the span of those 15 months. For me, and for the rest of the lobbyists, we are all glad the session came to an end without any contentious issues.

Budget

One of the disputes during 2015 was the budget. During the 2016 Session, the legislators rolled up their sleeves, worked together and passed a budget totaling \$82.3 billion,

with just over \$200 million for affordable housing programs. The State Housing Initiative Partnership (SHIP) program was funded at \$135.5 million, and the State Apartment Incentive Loan (SAIL) program was funded at \$64.6 million. Additionally, FAHRO joined with other stakeholders in a concerted effort to get the Legislature to allow the Florida Housing Finance Corporation (FHFC) to use about \$70 million in proceeds from Guaranty Fund deals for SAIL. This puts the total amount of



Oscar Anderson

See **2016 LEGISLATIVE SESSION** on page 3

Calendar

FAHRO REGIONAL TRAINING EVENTS

Public Housing Management
May 16-20, 2016
Jacksonville, Fla.

Family Self-Sufficiency Training
June 21-23, 2016
Ft. Myers, Fla.

Need specific training or classes?
Email Corey@FAHRO.org to help set them up!

FAHRO BASKETBALL TOURNAMENT
August 12-14, 2016
Orlando Sports Center

FAHRO ANNUAL CONVENTION & TRADE SHOW
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Internal Circulation



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Member Feedback

Do you need help with a project or issue and want to see if any of our readers have the answer? Has a colleague done something wonderful that deserves an attaboy or attagirl? Or are you just frustrated and want to vent? Here is your chance to (anonymously if you wish) say thanks, ask for assistance, vent your frustrations, express your opinion or let us know how you feel.

- FAHRO welcomes Jarvis Ogden, the association's new director of communications and marketing. He holds the BA in communications studies (2008) and the MA in integrated marketing and communication (2010), both from Florida State University. Jarvis says he hopes to add to the educational and advocacy efforts of this exceptional organization through the use of strong messaging and a passion for community betterment. In his spare time, he loves to watch and play basketball, write on



- his blog, *Conscious Approach.com*, and day-dream about being a music producer.
- Dear FAHRO Family, After almost four years of exciting and memorable experiences with FAHRO, I am bidding adieu to pursue other career opportunities. I want to take this moment to thank you all for being a great group to work alongside, as I will miss the enthusiasm, perseverance and, of course, the spirit that encompasses FAHRO. I thank you for your support throughout the years and wish everyone the very best. Do not hesitate to keep in touch (*chynn1026@gmail.com*). Best regards, Cherie Pinsky

If you would like to contribute to Sounding Off, please email your comments to Susan Trainor, FAHROgram editor, editor.trainor@gmail.com.

PRESIDENT'S MESSAGE continued from page 1

to Work (MTW) expansion, new developments regarding the Small Housing Authority Reform Proposal (SHARP) initiative and the Streamlining Final Rule. This exciting forum also included a presentation on Connect Home and bridging the digital divide,

conducted by EveryoneOn in collaboration with U.S. HUD.

As always, the *FAHROgram* will continue to keep you informed about these and other housing initiatives as they develop.

LEGISLATIVE SESSION 2016 continued from page 1

available SAIL funding at over \$100 million for this fiscal year. As the numbers demonstrate, it was a great year for affordable housing funding!

FAHRO Priorities

On April 8, Governor Scott signed into law SB 1534 by Senator Simmons, which included several FAHRO priorities. First, the bill clarifies that it is a violation of state law if PHAs, regardless of when they were created, apply to the federal government to acquire any projects, units or vouchers of an established housing authority.

The bill also creates an exemption for PHAs from current state law, F.S. 215.42, which puts limitations on extra compensa-

tion, bonuses and severance pay, and defaults to federal law.

Finally, the bill removes the requirement that PHAs must submit financial information to the Special District program at the Department of Economic Opportunity under F.S. 218.32.

Despite multiple meetings with the Executive Office of the Governor, we were unable to get past the governor's objections to our PHA voluntary consolidation language. "Next steps" was a topic of discussion at the FAHRO Executive Directors' Forum held at the end of April, and we will update the membership as this issue evolves.



We Love Our Lindsey Software.

Bartow Housing Authority

Executive Director: Catherine E. Reddick
Bartow, Florida

*“I have been using
Lindsey for more than
23 years, and I would
not use anything else.
Lindsey has so many
good shortcuts, that it
doesn’t take me long
to do anything!”*

— CATHERINE REDDICK —

KEY TAKEAWAYS

- User-friendly software
- Easy to learn
- Economical
- Saves time
- Free, unlimited training
- Great support
- Mobile solutions
- Online rental applications

THE SITUATION

Catherine Reddick, Executive Director of Bartow Housing Authority in Florida loves to talk about Lindsey software. With more than 23 years as a user, she feels that Lindsey is user-friendly, very easy to learn and helps her do her job more effectively.

Catherine began her career in public housing at the Winter Haven Housing Authority. After 13 years, she moved to the Bartow Housing Authority as Executive Director and has been there for 11 years.

THE SOLUTION

Lindsey is a total solution for Catherine and her staff and she is not afraid to tell other agencies. “I know I am not their largest client, but they always treat me like I am,” says Catherine.

Bartow HA uses almost every module Lindsey has, plus the mobile solutions and HousingManager.com online rental applications. They have made an investment in the entire package and like the way everything works together.

MOBILE

Catherine comments, “When we first got the mobile products, I was a little afraid of making the change. Then I went out and did an inspection on the iPad myself and realized that it was much easier than I ever expected.”

HOUSINGMANAGER.COM

Moving applications online has been extremely beneficial in reducing tenant traffic in the office. Tenants are very versatile and have adapted well to filling out applications from their computer, tablet or mobile device.

TRAINING & SUPPORT

Catherine and her staff take advantage of the free training opportunities whenever possible, attending webinars and using the online Portal. “We use support when there is a problem, or something I just cannot figure out. They know me by my first name,” says Catherine with a smile.

Bartow Housing Authority is a satisfied Lindsey customer. After 23 years using Lindsey, Catherine says it would be hard to find another company that could change her mind. “Lindsey has made an investment in this industry by creating products that make my job easier, and I have made an investment in Lindsey.”



Think Before You Text

PHA Texts Are Public Records

by Ricardo L. Gilmore, Esq.



Ricardo Gilmore

Using text messages to conduct the business of your housing authority could land your agency on the wrong side of a public records request lawsuit, so I am not going to bury the lead.

Following is my recommendation to PHAs regarding the use of text messaging, and I will explain how we got to this point after you have had the opportunity to read my recommendation.

PHAs should have their wireless telephone service carrier completely disable text messaging on agency phones. Additionally, I recommended the adoption of a policy against sending business texts on any agency phone or personal phone. The recommended policy does allow for text messaging to be reinstated for short periods when an emergency exists, as determined by the executive director or the president/CEO, with provisions being made to capture all texts sent and received during that time period. This policy will allow the housing authority to answer truthfully that it has no text messages that comply with a public records request, since the phones issued by the housing authority don't have texting capability activated and the agency has a policy against using text messages to conduct PHA business on personal phones. Some of the housing authorities I represent already have adopted this practice and policy. I recommend it for large, medium and small housing authorities alike.

Why am I so worried about PHAs using text messaging? The answer is simple. A PHA's texts are public records. If someone seeks public records in a valid public records request and you cannot produce them, this person has the ability to sue. If the plaintiff wins in court, he or

she automatically gets attorney fees, as the law stands today. (There was a bill in the legislature this past session to remove the automatic fees and leave it to the courts to decide if fees would be awarded on a case-by-case basis, but the bill did not pass.) This could become another cottage industry for those that continue to exploit the public records laws to obtain attorney fees. All they have to show after they make the request is that you allow business texting at your housing authority, that texting has occurred and that you don't have a way to capture the text messages.

Your wireless telephone service carrier does not routinely maintain text messages on its server for more than a few days. Therefore, there is no external way to capture text messages for long periods of time without making special arrangements with your carrier. The costs to do so can be excessive, and particularly burdensome given shrinking subsidies from HUD.

You may say that the phones you use allow you to save as many text messages received and sent as you like in the phone's internal memory. How you make sure all business texts are saved and/or printed is potentially problematic, however. Also, what happens if a phone is lost or stolen? Further, since each phone is in the exclusive control of each employee, how do you ensure that select text messages are not deleted, leaving you with an incomplete record? Finally, if a public records request is made for your or your employees' text messages, do you want to be in the position of having a court order that your phone must be made available for inspection to determine which text messages are business texts and which are personal?

Some of you have said that perhaps you'll entertain adopting a policy, but will not disable the texting capabilities of the agency's phones to allow for transitory text messages like "running late" or "meet me at the warehouse with the tools." My concern about transitory texting limitations is that you and senior staff may understand what constitutes this limitation, but I'm not sure lower level personnel will understand and/or comply. Plus, this still potentially allows a court to order

your phones to be examined to determine which texts are business or personal.

My recommendation against texting may seem like a drastic solution. After all, most of us have come to rely on text messaging as a quick and efficient method of communication. Well, what's the alternative? Some public agencies in Florida have made provisions with their wireless telephone service providers to capture and preserve text messages so they can comply with the public records laws. Depending on the number of phones involved, you may find that the cost to do this is prohibitive.

The only other alternative of which I am aware is to have a system in place to have all business texts emailed to a central point so they can be chronicled and printed if necessary to comply with a public records request. This would be cumbersome, time consuming and definitely not foolproof.

What about text messages you sent in the past? If you can preserve them, do so. But let's concentrate on the future ... quickly. You should decide today how to handle your PHA's use of text messaging.

Ricardo L. Gilmore is a senior partner and co-founder of Saxon Gilmore & Carraway P.A. He has practiced law for more than 30 years and specializes in the areas of business and corporate law, real estate, public finance and commercial litigation. He serves as special counsel to housing authorities in Florida and other states relative to affordable housing development matters.

Visit the FAHRO Website!



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Critical Documents: Your REAC Report and Photo Index

by Michael Gantt, Senior VP, The Inspection Group

Executive Summary: Download, study and retain electronic copies of your REAC Inspection Summary Reports and associated photo indices. These provide valuable information that can help you improve your REAC scores while reducing the cost of achieving this goal. These documents are also the basis for preparing appeals, which can significantly improve the outcome. Preserving these documents is easy, and your plan for managing future REAC inspections is incomplete without this critical component.

Every owner or manager of a property that is subject to the REAC (Real Estate Assessment Center) inspection should understand the importance of reading and maintaining a permanent copy of the REAC Inspection Summary Report. This document provides an important key to understanding how REAC scoring works and how to plan for the successful outcome of future inspections.

The REAC scoring system works a little differently for every property due to hundreds of variables that can shift the balance of the scoring breakdown between the five inspectable areas: site; exteriors; systems; common areas; and units. This, in turn, affects the scoring value of every potential deficiency. Recognizing these

effects allows the user to prioritize efforts to achieve a good score on the next inspection.

If you are not basing your own REAC preparations on a solid grasp of the scoring system, you are likely spending far too much time and money getting ready for inspections, and not achieving the best possible results in the most efficient way. If you are not analyzing and retaining a copy of your REAC report, it is unlikely you are basing your REAC preps on sound decisions that weigh the scoring value of known issues against the time and money required to resolve them.

The Summary Report should be downloaded from HUD's Secure Systems website as soon as possible when a REAC score is released. The release date—the date when the report becomes available—is what determines your deadline for appealing the result. HUD does not necessarily inform you when the report has been released, and if you wait for this to happen, it is possible that your deadline for appeals may have passed before you are even aware of your score.

Management companies and ownership entities that are actively retrieving and analyzing their REAC results will achieve better overall results because they have a better understanding of the scoring system, and this guides their preparation activities.

See NEWS YOU CAN USE on page 7

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They are also better prepared to mount an appeal when necessary to push their score from an 89 to a 90, for example. They don't waste the opportunity due to missing the deadline.

Beyond that, it is impossible to compile an effective appeal without having the REAC report in hand and understanding the findings it contains. As of early 2013, inspectors have been required to take photographs of all Level 3 (high severity) defects. These photos can be downloaded from the same website as the REAC scoring report. Reviewing these photos can reveal opportunities for appeals, or can be instructive in the preparation and documentation of appeals.

Every property that is subject to REAC has a designated contact who has been assigned a user ID and password for accessing the Secure Systems. This person should be logging in to the system on a regular basis to monitor the status of the property in HUD's database. Particularly, in the immediate wake of a REAC inspection, this person should be checking the system daily to note the release date and score, and to download the report and photo index pages.

It is important to download and save a copy of the report in PDF format and the photo index in HTML format rather than simply print copies. The PDF is text searchable, and can be converted to an Excel spreadsheet if desired. It can be stored electronically, and can be reprinted with good, legible quality again and again, as opposed to sharing documents that may accumulate handwritten notes and degrade with recopying. The photo index provides a key to the meaning of each photo, and when properly saved in HTML format provides interactive links that allow the user to view each photo online without being logged in to the HUD system.

It is not necessary to download and preserve the individual photos themselves. It is much more useful to view the photo index page and then save it as a webpage file. The index lists each Level 3 defect and links it to the associated photo. The photos themselves are not labeled in any useful way to indicate which defect they represent. Without the index, it is impossible to be certain which photo goes with which defect.

Want to learn more? Email the author at mike@theinspectiongroup.com. 🌿

Easy Steps for Downloading REAC Reports & Photos

Know who has your user ID and password to the HUD Secure Systems. Have this person log in and locate records for your property, completing these added steps:

1. Note the most recent score and REAC report release date.
2. Click on the Adobe Acrobat icon under "View POA" to download the REAC Inspection Summary Report, saving it as a file rather than printing it for future use. Rename the file when saving to reflect the property ID and REAC date.
3. Click on the Photos link to access the photo index pages.
4. Using the browser file menu, select "Save As" and select the simple webpage HTM/HTML option.
5. When saving the first page, append a "1" to the file name. Append a new page number to each subsequent page to avoid overwriting the prior page file.

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Northwood II - Daytona Beach Housing Authority
NAHRO Merit Award Winner



New Smyrna Beach Opens New Affordable Housing

by Meredith Kight

Years of planning and work came to fruition on April 14 as the New Smyrna Beach Housing Authority held a ribbon-cutting ceremony to celebrate the completion of its new open market homes. A collaborative effort between the housing authority, the City of New Smyrna Beach and Volusia County, these houses represent some of the first significant rental housing development in the Historic West Side neighborhood in nearly 50 years.

City plans describe the Historic West Side as a predominantly African-American community dating back 150 years to the period after the Civil War, a community that thrived with the beginning of the Florida East Coast Railroad. A 30-year strike lessened the railroad's economic impact on the area, however, and severely impacted the neighborhood's economy. New Smyrna Beach, and the West Side in particular, were also hit hard by recessions such as the recent housing crisis in the late 2000s.

While the neighborhood has maintained a strong cultural identity and sense of community, economic struggles have caused many of the houses in the Historic West Side neighborhood to go into decline. Rental and home prices in nearby areas have increased rapidly over the past several years, which has led to a lack of quality, affordable rental housing in the neighborhood, according to housing authority's executive director, Brian Clark. Recognizing the need to protect the core group of residents (61% of whom



New resident Joy Moore cuts the ribbon while housing authority staff and board members, the mayor and city officials look on.

are renters according to the city's development plan, 2011) and to bring something else into the community other than the federally assisted public housing already managed by the housing authority under HUD's direction, Clark decided it made sense to step in.

"We just have to find any opportunity available to us to make some difference, and what I put in our original grant application was we're already invested in the community," Clark says. "We have 126 families living here, so it's of our highest concern to make sure that community doesn't become blighted."

See HA SPOTLIGHT on page 9

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Working with a \$271,979 grant from the Community Redevelopment Agency for the City of New Smyrna Beach, a \$340,000 grant from Volusia County's HOME program as well as housing authority funds, construction of six homes began on land donated by the city at the corner of Railroad and Dimmick streets. Using this mix of financing is something Clark said he isn't aware of any other housing authorities doing, and it has created an opportunity to rent these homes affordably without debt service or using federal rent subsidies. Additionally, the housing authority signed an agreement with the city and county that the houses must remain affordable for a period of at least 25 years, and hired local contractors almost exclusively to perform the construction work.

In a speech at the ceremony, Mayor James Hathaway of New Smyrna Beach applauded this unique strategy, saying "Because of this incredible team effort, this area has been transformed into a family oasis, a place where children can play and families can grow. We are so proud to be a part of such a wonderful collaborative effort."

Each home has three bedrooms and two bathrooms and was designed to accommodate working families making between \$14,000 and \$45,000 per year, as well as to bridge the gap between the maximum rent in a public housing program and local rental rates. They will rent for approximately \$736 to \$945 per month, around half of the market rate for the area.

"I'm very excited about [the new houses], I can't even explain, I've never had my own house," says 21-year-old Joy Moore, who will be moving her family into one of the properties after nearly three years in public housing. 🌿

REAC Inspectors Request Lead-Based Paint Certification

Vivian Bryant, president/CEO of the Orlando Housing Authority, reports that HUD REAC inspectors have asked for lead-based paint certification for OHA's oldest property. Other housing authorities may be asked to provide this certification during their REAC inspections. Thanks to Vivian for sharing this important information!

The HUD Office of Lead Hazard Control and Healthy Homes (OLHCHH) provides funds to state and local governments to develop cost-effective ways to reduce lead-based paint hazards. In addition, the office enforces HUD's lead-based paint regulations, provides public outreach and technical assistance and conducts technical studies to help protect children and their families from health and safety hazards in the home.

To assist public housing authorities and property owners/managers that work with HUD, the OLHCHH provides informational materials and the Lead-Based Paint Compliance Advisor, an electronic tool for regulatory compliance, on its website at www.hud.gov/offices/lead. Questions may be directed to the HUD Lead Regulations hotline at 202/402-7698 or lead_regulations@hud.gov. 🌿

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Fort Myers Residents Achieve Success Through FSS Program

The Housing Authority of the City of Fort Myers (HACFM) Client Services Department (CSS) has a history of success stories of residents living in public housing who participated in the Family Self-Sufficiency (FSS) program.

Client Services (formerly Resident Services) hosted its first FSS recognition banquet in 2008 at the Pelican Preserve, sponsored by Fifth Third Bank. The keynote speaker at this event was a former public housing resident of Southward Village, Nadine Thomas. Thomas became a single parent of three daughters. After earning a nursing degree, she purchased a home in Fort Myers. She later moved to Atlanta. In 1992, she was the first African-American woman of DeKalb County to be elected from metro Atlanta's newly created 10th District to the Georgia State Senate. Thomas holds a master's degree in public administration (2005) and the PhD in public policy and administration (2014) from Walden University.

Phoenicia L. Grant, one of the recipients who received a "Shining Star" award at the 2008 FSS banquet, heard Nadine Thomas's story firsthand. Grant publicly shares her story with hopes of encouraging families that their dreams can become a reality. Although she faced many challenges, she attributes her success to the HACFM offering her housing in a one-bedroom unit at Michigan Link Apartments. She later joined the FSS program and used it as an opportunity to create a four-year exit plan.

Grant obtained her associate's degree from Edison Community College. In 2005, she graduated from Florida Gulf Coast University with a bachelor's degree in elementary education with an English for Speakers of Other Languages (ESOL) endorsement. After three years of working as an elementary teacher in Fort Myers, she relocated to Atlanta and accepted a position as an ESOL teacher. In 2008, at the age of 25, Grant became the first homeowner in her family.

As an ESOL teacher, Grant soon realized that many of her students had social and emotional concerns that impacted their ability to learn. She reflected on the people and the community that had helped her work through some of the same barriers to make the impossible possible and decided to return to college to obtain a master's degree in school counseling.

By combining her experience as an ESOL teacher and a school counselor, Grant was able to transfer her skills into the perfect career as a counselor and international transcript evaluator for the DeKalb International Welcome Center in the DeKalb County School District. 



Nadine Thomas



Phoenicia L. Grant

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Work Orders Entered Into Client Work Order System.

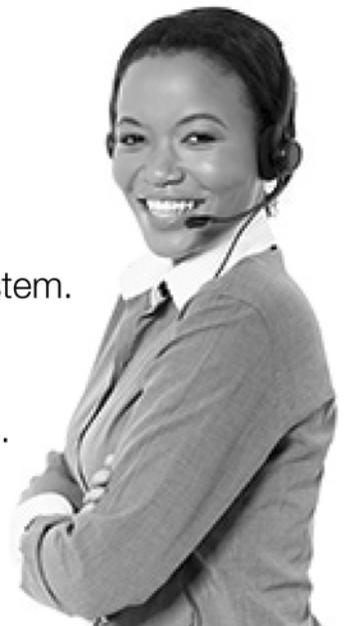
Inspection Call Center

Reduce No Show Rate because of direct contact with
Landlord and Tenant via calls, text and emails.

All information is updated in Housing Authorities Management System.

Reception Services

Receive All Calls from Applicants, Tenants, Vendors and All Others.



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Pinellas County HA Continues to Assist Veterans With Housing Opportunities

Pinellas County Housing Authority (PCHA) recently participated in the 2016 C.W. Bill Young VA "Stand Down." C.W. Bill Young hosts the event annually to help provide services to homeless veterans or veterans who are at risk of becoming homeless.

Services and service providers included food, toiletries, clothing, information about benefits, housing and legal advice, employment assistance, as well as access to medical care and hot showers. PCHA staff was there to provide information about housing and to provide assistance with navigating the application process. Individual case management services are provided by outstanding VA staff dedicated to providing case management to homeless veterans.

In addition, as a funding partner for the project, PCHA recently participated in the grand opening and ribbon-cutting



Veterans receive information and services at the recent VA "Stand Down" in Pinellas County.

ceremony for the newly constructed Duval Park community for veterans and their families. Duval Park was developed by Blue Sky Communities and Boley Centers. PCHA provided project-based vouchers in support of this new community. 🌿

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Photographs are welcome!



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Housing Authority of the City
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2016 Annual Convention & Trade Show

August 16-18, 2016

Disney's Grand Floridian



How to Insure Against Employee Dishonesty Brought to you by FPHASIF!

Employee dishonesty crimes spiked at the height of the Great Recession in 2008. But despite a strengthening of the global economy, incidents of employee theft continue to rise.

The U.S. Chamber of Commerce estimates that employers lose \$20 billion to \$40 billion each year to employee theft. More shocking still, employee theft contributes to nearly 30% of all business failures.

And the alarming statistics don't end there.

According to a report issued in 2012 by the Association of Certified Fraud Examiners, U.S. businesses lose 6% of their annual revenue to employee fraud.

Employee theft is a very real threat to businesses regardless of their size and age. The median loss to employers is \$140,000, with the median loss suffered by small businesses nearly \$100,000 higher than the median loss suffered by larger companies. Fewer than 10% of employee theft incidents are discovered, and only a small percentage of those uncovered are ever reported to authorities.

Loss recovery statistics are equally grim: The median recovery to an employer (from an employee) is 20% of the original loss. More stunning, 40% of employers recover nothing at all.

Employers must take action to protect against internal losses. One measure is a specialized insurance policy referred to as employee dishonesty coverage, designed to indemnify an employer in cases of fraud and embezzlement by an employee and to provide third-party coverage for related losses.

Though employee dishonesty coverage seems straightforward—an employee steals from the company and the policy indemnifies—employers should take note of two important facets of its protections: the prerequisites for coverage and a nuanced exclusion for “prior knowledge.”

Prerequisites for Coverage

Policies will vary, but typically an employer can expect three prerequisites for coverage under an employee dishonesty policy:

1. The action must be intentional, fraudulent and dishonest. Accidental or negligent loss to the company is not sufficient.
2. The employee must intend to obtain a financial benefit for him or herself or another person.
3. The financial benefit must be other than salaries, commissions, fees, bonuses, promotions, awards, profit shar-

ing or pensions, or other employee benefits earned in the normal course of business.

Nuances to the “Prior Knowledge” Exclusion

Assuming an employee's actions satisfy the prerequisites for triggering coverage, employers should pay close attention to a policy's prior knowledge exclusion. The prior knowledge exclusion has three nuances that frequently result in a denial of coverage:

Nuance 1: Coverage for subsequent dishonest acts. An employer's decision to excuse or forgive an employee's first act of dishonesty constitutes prior knowledge. If the same employee commits a subsequent act of theft or dishonesty, the subsequent act will not be covered.

Nuance 2: Employees identified to possess prior knowledge. Generally, the prior knowledge exclusion prohibits recovery if anyone employed by the company has knowledge of the fraudulent activity. Technically, an employee who is intentionally, fraudulently and dishonestly stealing money from an employer has prior knowledge of the dishonest act that he or she is committing. Policyholders must be diligent in reviewing a policy's exclusionary language and negotiating less restrictive language that protects their interests. It is possible for the employer to negotiate an alternative with the insurer to limit the prior knowledge exclusion to the CEO, CFO and/or general counsel—meaning the exclusion will only apply if any of these specific people have prior knowledge, as compared to anyone employed in the organization.

Nuance 3: The definition of “knowledge.” Though on its face, the prior knowledge exclusion only purports to exclude known behavior, a Kansas court expanded this definition to include insurer investigations into potential fraud. The thinking behind this definitional expansion is that the insurer had a reasonable expectation that dishonest acts occurred, and therefore the prior knowledge existed.

Given the specificity of the prerequisites of employee dishonesty coverage and the highly nuanced prior knowledge exclusion, employers must do their homework. Engaging an experienced broker and coverage counsel to review or audit an employee dishonesty coverage policy can provide added protection.

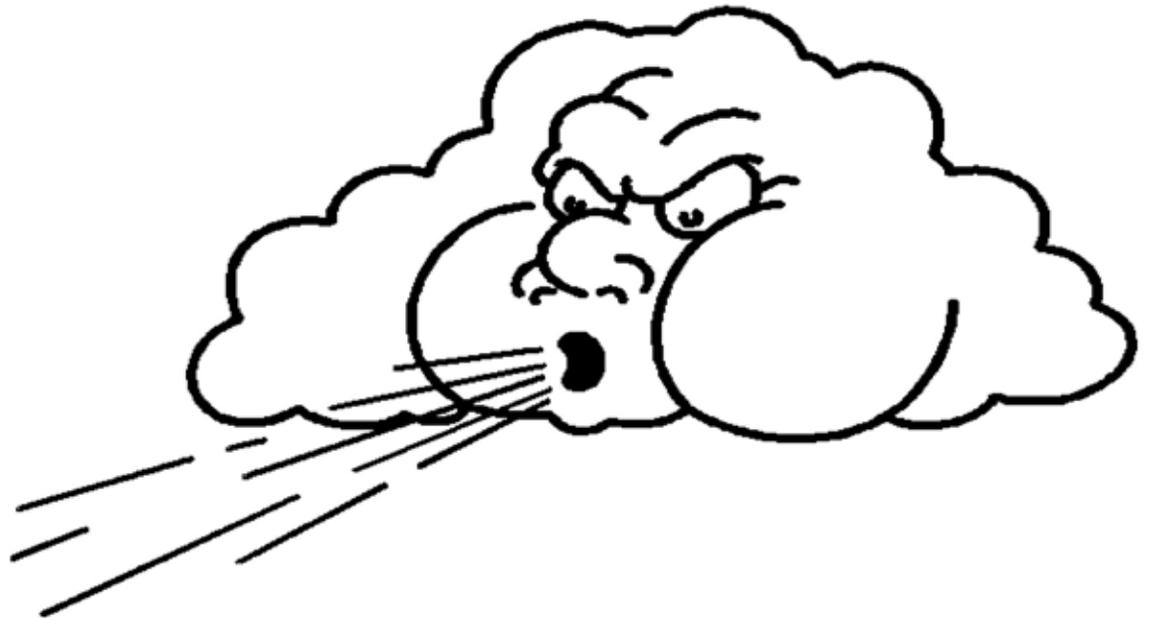
This informational piece, written by Franklin R. Cragle III, Esq., was published on Jan. 13, 2016. Republished from *propertycasualty360.com* on behalf of Hunt Insurance Group, LLC.



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