

An Insurance Guide for Nonprofit Organizations

CONTENTS

I. Introduction
II. Insurance Myths
III. Risk Management Strategies
IV. Purchasing Insurance
V. A Shopper's Guide

VI. Obtaining Consumer Assistance
VII. Legal Protection
VIII. A Glossary For Nonprofits
IX. A Resource Guide

Questions can be addressed to:

Steve Thompson
Aspen Risk Management Group
sthompson@aspenrmg.com
www.aspenrmg.com

I. INTRODUCTION

Recognizing the importance of nonprofit organizations in the US, this insurance information will help nonprofits navigate fundamental insurance issues, and help them better understand the insurance risks they confront. In so doing, nonprofits can continue to provide client services without needlessly jeopardizing their organizations with information for consumers' philanthropic assets.

II. COMMON INSURANCE MYTHS ABOUT NONPROFITS

It's important to remember that the possibility of being sued and the possibility of being found liable are two completely *different* things! Here are some of the myths that nonprofits often accept about insurance, even though the facts may be quite different.

Myth No. 1: *Nonprofits can't be sued because of charitable immunity.*

FACT: The concept of charitable immunity is based upon the notion that charitable organizations and individuals should be exempt from legal liability while giving selflessly to better their communities. Originally based upon an 1861 English court case, the doctrine of charitable immunity has faded over time. Today, according to the Nonprofit Risk Management Center, the concept of charitable immunity has gone the way of the dinosaur.

Myth No. 2: *State laws protect charitable organizations against the threat of lawsuits.*

FACT: Today only three states (Alabama in 1991 and Delaware and Colorado in 1992) have adopted model statutes to provide liability protection to all volunteers (not just directors and officers) working for charitable organizations.

Myth No. 3: *The only insurance policy nonprofits need to purchase is a general liability policy.*

FACT: A general liability policy only covers basic exposures, such as premises and operations; even the organization's officers may not be protected under a stand-alone general liability policy.

Myth No. 4: *Our Directors & Officers (D&O) policy will protect us against any employment-related lawsuits.*

FACT: The coverage provided under many D&O policies can be very limited, with extensive lists of exclusions. D&O policies also do not protect against most employment-related lawsuits.

Myth No. 5: *If a charitable or nonprofit organization must purchase insurance, the organization should just try to purchase the lowest priced policy possible.*

FACT: Absolutely wrong. An organization should determine its potential exposure to loss and then get coverage appropriate for that exposure. Buying a policy that doesn't fit your needs is no bargain.

III. RISK MANAGEMENT STRATEGIES

If you don't have a risk management program, ask your organization's insurance company, agent or broker to help design one.

The purpose of a risk management program is just that, to manage risk. Insurance professionals can assist you in avoiding or modifying those activities which expose you or your organization to potential lawsuits, while insuring against those risks that the organization must bear in order to achieve its mission, goals and objectives.

A risk management program does not eliminate the need for insurance. Ideally, your organization only needs to purchase insurance protection against those risks that cannot be avoided through prudent risk management.

A good risk management program will:

1. Increase the likelihood your organization will be viewed as a "good risk" by insurers.
2. Let you select only those coverages you need at an affordable price.

Where to start? Consider all of your organization's resources (staff, property, financial capital, etc.) and all of your organization's activities. Now think of everything that can go wrong! This exercise should give you a pretty good idea of the many types of risks your organization can face.

Here is an extensive — but by no means exhaustive — list of typical insurance risks a nonprofit may encounter.

RISKS POSED BY INDIVIDUALS:

Disgruntled or terminated employees.

Employees who were victims of sexual or other types of harassment.

Employees who faced discrimination.

Non-payroll: A wide variety of other people may pose insurance risks to your organization in certain circumstances: Clients, members of the public, vendors who visit your premises, donors and volunteers.

Your organization also may find itself at odds with public agencies.

RISKS POSED BY CERTAIN ACTIVITIES:

Activities in which volunteers are injured while performing assigned duties.

Neighborhood Watches may be liable if they improperly interfere with law-abiding citizens.

An auto accident that occurs as a volunteer is doing work for the nonprofit.

Fundraising events. For example, an inebriated wine-tasting participant may cause damage or injury.

Once the various types of risks have been defined, you will have a better grasp of the type of insurance coverage your organization needs. Volunteers pose special risk issues. If your organization utilizes volunteers, be sure your insurance professional is someone familiar with, or specializing in, volunteer programs. Without this expertise, you will be less likely to obtain the optimal package of insurance options.

IV. PURCHASING INSURANCE

QUESTION: Is insurance difficult to find?

No, but the process is sometimes confusing. Purchasing insurance coverage for nonprofit organizations can be complicated and require the assistance of professional agents and brokers. In addition, the nonprofit market is highly specialized. Not all companies will have the requisite experience and expertise your organization desires. Be sure your insurance professional does.

QUESTION: Is insurance available for my nonprofit organization?

Yes. This is a competitive marketplace and coverage is available.

QUESTION: How do I know what we need?

The answer is not always easy. Each organization is unique, with different needs and financial constraints.

The object is to purchase the right amount and type of insurance at the best value. The premiums your insurance company will charge are based largely upon the company's administrative expenses and their expected claims. Those expectations will in turn be affected by prior experience. Premiums will also fluctuate along with changes in the economy, as well as with cyclical upswings and downswings in the insurance market.

A wide variety and scope of insurance services are available, and a broad range of premiums is charged for these services. Remember that your insurance professional works for you. Approach the problem of purchasing insurance the same way you would approach any other problem faced by your organization. In other words, put the needs of the organization first. Have your agent/broker check on quotations from different insurance companies if necessary.

QUESTION: What if I live in a small community, and the agent or broker I am dealing with doesn't represent a company which specializes in nonprofit organizations?

Ideally, insurance professionals represent companies that specialize in insuring nonprofit organizations. But sometimes that is not possible.

Here are some ideas to help you choose an agent or broker that fits with your needs and wants

1. **Choose the right insurance professional/broker/agent to work with.**
2. **Try to compare apples with apples, oranges with oranges.** Policies differ between various insurance companies. For example, if you need to purchase a general liability policy, compare the policy you're considering to other general liability policies offering the same coverage.
3. **Consider what losses are covered. But also consider what losses are specifically excluded. If your organization is mostly field staff conducting door-to-door activities,** a less expensive policy that does not protect against off-premises liability may be of little value. In this case, a more expensive policy may be justified because it includes the coverage you want.
4. **Select the coverage most clearly tailored to meet your group's needs.** If your organization is made up largely of volunteers, a policy specifically designed for volunteer programs may be of greater value than a more generic policy that may at first appear the better buy. In fact, your organization probably will need more than one policy (including workers' compensation coverage) in order to acquire full insurance protection.

V. CONSUMER ASSISTANCE

Your insurance professional should be able to assist you with many of your insurance needs. In addition, the National Association of Insurance Commissioners (NAIC) has links and information for each State.

National Association of Insurance Commissioners (NAIC)

Executive Headquarters

2301 McGee Street, Suite 800
Kansas City, MO 64108-2662
Switchboard Hours: Mon - Fri 8 a.m. to 5 p.m. (Central Time)
Main Phone: 816.842.3600

http://www.naic.org/state_contacts/sid_websites.htm

VI. LEGAL PROTECTION

For those organizations who want to learn more about their liability under the law, articles of incorporation, and other legal issues, contact your Secretary of States' office for more information.

VII. A NONPROFIT GLOSSARY

Directors and Officers (D&O) policies:

D&O policies are purchased in order to protect both the organization and its directors and officers. Many of these policies offer only limited protection for the organization. But if they are selected carefully, they can supplement the indemnification protection appearing in the nonprofit's articles of incorporation.

Derivative actions:

If an action is brought against a board member on behalf of the organization itself, as opposed to a third party action, (see third party liability of board members), this is referred to as a derivative action. Although rare, derivative actions occur when a lawsuit is brought against a board member by the State Attorney General, another board member, or other members of the nonprofit organization.

Endorsement (Insurance):

Endorsements are modifications of an existing insurance contract or policy. A nonprofit organization may have to add these provisions or modifications to an existing policy to ensure the coverage is tailored to meet peculiar circumstances or needs.

General Liability Insurance:

Policies that provide basic liability protection. Subject to exclusions and limitations, coverage usually applies for legal responsibility for bodily injury and property damage losses arising from the premises, operations in progress, products and completed operations. Other coverages may be included depending on the particular policy form.

Indemnification:

Where permitted by state law and its bylaws, an organization can promise to reimburse board members for legal costs they incur. Even when a nonprofit corporation has established extensive bylaws consistent with prevailing state law to indemnify its officers, the value of this protection is limited by the financial resources at the organization's disposal. Paltry financial resources frequently necessitate the purchase of supplemental insurance protection.

Third-party liability of board members:

Board members are considered liable to third parties when:

- Board members knowingly participated in wrong doing.
- The nonprofit organization acted outside of, or in some way inconsistent with, its bonafide status as a nonprofit organization.
- Board members had either *reason to know* of wrongdoing or were *negligent in not knowing* of wrongdoing by the organization.

Tort:

A "tort" is a private or civil action, not a criminal act. Generally, an action in tort involves a violation of a duty imposed by law upon persons having a legal relation to each other involved in a particular transaction. There is no action in tort if there is no resulting economic loss.

There must always be a violation of some duty owed one party to the other, and the duty must arise by operation of law and not merely by agreement of the parties or contract.

Elements of a tort action: (1) existence of a legal duty between the parties; (2) a breach of that duty; and (3) damages proximately resulting from that breach. All elements must be proved.

VIII. A RESOURCE GUIDE

D&O...Yes or No

Directors and Officers Insurance
for the Volunteer Board
Charles Tremper, Nonprofit Risk Management Center
1001 Connecticut Ave., NW, Suite 900
Washington, D.C. 20036
202-785-3891 fax 202-833-5747

Guidebook for Directors of Nonprofit Corporations

George W. Overton, Editor

Prepared by The Legal Guidebook For Directors Subcommittee and Nonprofit Corporations Committee

Section of Business Law, American Bar Association

Publications Planning and Marketing

American Bar Association

750 North Lake Shore Drive, Chicago, Illinois 60611

Managing Legal Liability and Insurance for Corporate Volunteer Programs

Charles Tremper and Jeffrey D. Kahn

United Way of America

701 N. Fairfax Street, Alexandria, Va. 22314, and the

National Center for Community Risk Management and Insurance, 1828 L Street, NW, Suite 505,

Washington, D.C. 20036

No Surprises, Controlling Risks in Volunteer Programs

Charles Tremper and Gwynne Kostin

Nonprofit Risk Management Center

(in cooperation with the American Bar Association Points of Light Foundation)

Nonprofit Risk Management Center

1001 Connecticut Avenue, NW Suite 900

Washington, D.C. 20036 (202) 785-3891

Nonprofit Policy Agenda Project for Washington State, Condensed Report, June, 1995

Sandy Gill

Northwest Nonprofit Resources

525 East Mission Avenue, Spokane, Washington 99202

509-484-6733 Fax 509-483-0345, e-mail: sgill@iea.com (With Support from The Union Institute and Northwest Regional Facilitators)

The Nonprofit Policy Agenda

Recommendations for State and Local Action

The Union Institute/May 1992

The Union Institute Office for Social Responsibility Center for Public Policy

1731 Connecticut Avenue, NW, Washington, D.C. 20009-1146, 202-667-1313

Nonprofits and the Property/Casualty Insurance Market: A Practical Assessment

Prepared for the Ford Foundation by Pamela Davis, Submitted June 1995

Northwest Nonprofit

Published bimonthly for the Northwest's nonprofit community by Northwest Nonprofit Resources

525 East Mission Avenue, Spokane, Washington 99202-1824; 509-484-6733 Fax 509-483-0345, Internet address: sgill@iea.com (See

Northwest Nonprofit, July/August 1995, Volume 3, Number 4)

1994 National Nonprofit Insurance Survey and Review

Prepared for the Ford Foundation by Pamela Davis, Submitted June 1995

State Liability Laws for Charitable Organizations and Volunteers

Prepared by the Nonprofit Risk Management Center

in cooperation with the American Bar Association, Section on Business Law, Committee on Nonprofit Organizations; Nonprofit Risk

Management Center,

1001 Connecticut Avenue, NW Suite 900

Washington, D.C. 20036

Washington State Trial Lawyers Association Legal Education Seminars

The 1996 Third Annual Symposium on Legal Issues Facing Non-profits; Guiding Non-profit Organizations Through Perilous Times;

May 10, 1996

Office of the Insurance Commissioner

Consumer Advocacy & Outreach Division

1-800-562-6900

** Material is non-copyright and was modified from resources at the Washington State Office of the Insurance Commissioner.*