What Basic Insurance Coverage Should a Nonprofit Consider?

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The first issue for any nonprofit seeking to purchase insurance is to find an experienced, trustworthy insurance agent or broker who understands and specializes in serving nonprofit organizations. Nonprofits are different from commercial businesses and public agencies, and are best served by an insurance professional who appreciates those differences and has dedicated resources to helping a nonprofit's leaders secure appropriate coverage that meets the organizations needs.

Liability Insurance

The next concern for most nonprofits is *liability* insurance—protecting the organization from claims alleging negligent conduct by the nonprofit, or its employees, volunteers or agents. Negligence is failing to do what an ordinarily prudent person would do under the circumstances or doing something an ordinarily prudent person would not do under the circumstances. Another way to think of negligence is that a plaintiff alleging negligence claims that the nonprofit failed to use the proper standard of care in providing services and that this failure led to the injury, death or other harm at the heart of the lawsuit.

Commercial General Liability

The most common liability policy purchased by nonprofits is the commercial general liability policy. CGL covers against claims for:

- bodily injury (someone suffered an injury),
- property damage (someone's property was damaged),
- personal injury (offences for libel, slander, defamation, or malicious prosecution), and
- advertising injury (libel, slander, or copyright infringement due to advertising activities).

The policy may also include *medical expense* that provides a low limit (usually $5,000 or $10,000 per person) for "no-fault" bodily injury. This limit is useful because its use does not require a finding of negligent on the part of the nonprofit.

In today's legal climate, a $1 million per claim and $1 million in the aggregate limit is the most commonly purchased entry-level limit for a CGL policy. Larger organizations often purchase policies with higher limits.

Business Auto

Another policy to consider is a *business auto policy*. If your nonprofit owns any vehicles, you need a BAP to cover the vehicles for auto liability and physical damage. If the nonprofit doesn't own any vehicles then you want to purchase *hired and non-owned auto liability* coverage. Often you can purchase this coverage as part of a package policy that includes commercial general liability, assuming the nonprofit doesn't own any vehicles. This coverage protects the organization (**not** the driver or vehicle owner), when the person is acting on behalf of the organization and has an auto accident. Thus, if a volunteer is driving her own car on behalf of the nonprofit

(such as going to the bank or attending a special event) and has an accident, her personal auto insurance will pay for the claim first. If the volunteer's personal insurance is inadequate to cover the amount of the loss (the member doesn't have auto insurance, has very low policy limits or causes a catastrophic loss), the non-owned auto policy would protect the nonprofit for its extent of the loss. Without this coverage, if such a claim occurs, the organization wouldn't have any insurance protection.

Directors' & Officers' Liability

Another liability policy to consider is a *directors' & officers' liability* policy. The D&O policy protects the organization, its directors, officers, employees and volunteers for their "wrongful acts" in governing and managing the organization. The actual people insured depends on which policy the organization purchases. Wrongful acts are allegations of breach of duty, errors and omissions, and other acts that cause harm to the organization or its stakeholders. The D&O policy doesn't cover loss for bodily injury or property damage; that's covered under the general liability policy or perhaps another liability policy.

If the nonprofit publishes a newsletter, marketing materials etc. you should consider a D&O policy that includes *publishers' liability* and *personal injury*. This provides broader coverage for libel, defamation, copyright or trademark infringement than the general liability policy.

The main argument for the D&O policy is that even with state and federal volunteer protection laws, board members may be targeted in lawsuits alleging wrongful management decisions and required to defend themselves. The nonprofit's promise to indemnify its board members (found in the vast majority of nonprofit Bylaws) is often a hollow promise in the absence of a large litigation defense fund or an appropriate D&O policy. As for limits, the base limit should be $1 Million per claim/$1 Million in the aggregate unless the organization is very small. Higher limits are appropriate when a nonprofit's leaders believe its exposure is greater than average, or when generous board members are uncomfortable serving as leaders in the absence of a policy with higher limits.

Workers' Compensation

If you have any full-time or part-time employees, your state law likely requires that your nonprofit will need a *workers' compensation* policy. If you have employees, you'll also want to make certain that your D&O policy includes *employment practices liability* (EPLI) coverage. Most nonprofit D&O policies include EPLI coverage. Employment-related claims are the most common type of D&O claims filed against nonprofits.

Umbrella or Excess Liability Policy

Another liability policy to consider is an *umbrella* or *excess liability* policy. This policy provides the organization with additional policy limits for a catastrophic liability loss. The umbrella policy provides additional limits over the general liability, business auto liability, and employers liability policies. An umbrella policy isn't mandatory but something to consider depending upon the type of activities your nonprofit offers. The umbrella policy doesn't provide excess limits for the D&O policy.

Property Insurance

A *commercial property* policy covers the property (furniture, fixtures, office equipment, stock, etc.) that the nonprofit owns. If your nonprofit owns any computers or electronic equipment, you should consider a *computer* or *electronic data processing* policy. A computer policy offers broader coverage for computer equipment such as loss due to power surges, head drive crashes, and possibly viruses.

Crime or Employee Dishonesty

Another coverage to consider is *crime*. You can purchase a crime policy (also called *employee dishonesty*) to cover theft by employees. You may be able to extend that coverage to also cover volunteers.

Business Owners Package Policy

Your organization may be able to purchase a *business owners* policy (BOP) or *commercial package* policy that

combines the general liability, property and crime coverages into one policy. These package policies are usually more economical than purchasing separate policies. Your insurance advisor (agent or broker) can help you with this.

This is just a very quick overview of some of the insurance coverage you should consider. As a reminder, your first step should be to find an insurance agent that has experience working with nonprofits. For more information on the process of purchasing insurance for your nonprofit, details on the types of coverage many nonprofits buy, and how to select an agent or broker, consult the Center's publication: *Covered: An Insurance Handbook for Nonprofits.*

The Nonprofit Risk Management Center welcomes questions and comments at 703.777.3504.