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Insurance for Nonprofit Organizations: What You Need to Know

What to Do and What *Not* to Do

Although leaders of nonprofit organizations have been purchasing commercial insurance for decades, the process has become only marginally simpler. The insurance world remains a strange and daunting environment for most nonprofit managers.

The Center offers the following do's and don'ts concerning the purchase of commercial coverage for a nonprofit organization.

Do:

- ☐ Take the time to find a competent, trustworthy insurance professional to help you purchase and understand the coverage your nonprofit needs and buys.
- ☐ Strive to find an insurance professional with practical experience advising nonprofit organizations.
- ☐ Take the time to read your insurance policies.
- ☐ Investigate the financial stability of your insurers.
- ☐ Ask your broker/agent to respond in writing to your questions.
- ☐ Seek multiple bids for your insurance coverage at least every three-five years.
- ☐ Give thoughtful consideration to how much risk your nonprofit can afford to retain.
- ☐ Provide your board of directors with a copy of your directors' and officers' liability policy.
- ☐ Discuss risk management and insurance issues at the board level.

Don't:

- ☐ Delegate responsibility for your insurance program to a junior staff member.
- ☐ Simply renew your coverages each year without considering whether your exposures, risk tolerance or circumstances have changed.
- ☐ Wait until the last minute to submit completed applications.
- ☐ Be evasive about your operations/exposures on your application.
- ☐ Be shy about asking questions concerning your coverage or the process.
- ☐ Regard your insurance coverage as your risk management program.

What's Appropriate Insurance Coverage?

Nonprofit managers and executives cope with many complex challenges on a regular basis. But one of the perennial questions is whether the nonprofit's insurance program (the collection of coverages you purchase) is adequate. Unfortunately, there are no easy answers to what seems like a simple question. Every nonprofit must evaluate its exposures, risk-taking appetite, risk tolerance and budget constraints in order to determine how much insurance it can and should buy. Some experts urge nonprofits to purchase as much insurance as they can afford. Yet insurance probably makes most sense as a financing method for truly unexpected or catastrophic exposures. Costs that can be readily predicted based on past experience should be financed internally.

Some of the most common property/casualty coverages purchased by nonprofits include:

- General Liability (GL) or Commercial General Liability (may include miscellaneous professional liability and improper sexual conduct)
- Commercial Auto Liability and Physical Damage
- Directors' and Officers' Liability (D&O) (generally includes employment practices liability, or EPL, but EPL can be purchased separately)
- Professional Liability (sometimes referred to as "errors and omissions" coverage, or malpractice coverage)
- Improper Sexual Conduct/Sexual Abuse
- Non-owned/Hired Auto
- Property
- Fidelity/Crime
- Umbrella
- Workers Compensation
- Accident Insurance
- Media Liability / Cyber Liability

What Services Should I Expect? Insurance Professional Services/Responsibilities

The following list indicates some of the services an insurance professional might provide to a nonprofit client. Every nonprofit must decide which services it requires or views as desirable.

- ☐ Provide complete and accurate information to insurance carrier on behalf of the insured. This includes signed applications and updated information at renewal.
- ☐ Remit down payments and balance payments to insurance carrier in a timely fashion.
- ☐ Arrange financing if requested by insured member.
- ☐ Help insured with compliance with safety recommendations.
- ☐ Complete Certificates of Insurance and request Additional Insured endorsements as required by funding sources, landlords, etc.
- ☐ Review all contracts for the insured in respect to insurance requirements. Forward unusual contractual obligations to insurance carrier for review and comment.
- ☐ Be available to answer questions regarding the insurance contract.
- ☐ Report claims and coordinate claim adjusting with insurance carrier.
- ☐ Be available to participate in the insured's risk management committee, if requested.

- ☐ Be available to attend at least one of the insured's board meetings per year, if requested.
- ☐ Present an appropriate insurance package to the insured for its review and decision.
- ☐ Serve as a source of information for his/her clients in regards to insurance questions.
- ☐ Maintain a complete insurance file for the insured nonprofit. (As the insured, you should keep a copy as well.)
- ☐ Maintain continuing education and proper licensing status at all times.

Liability Insurance for Nonprofits: A Closer Look at Specific Policies

COVERAGE NAME	COVERS LIABILITY FOR
COMMERCIAL GENERAL LIABILITY ("CGL Insurance")	Bodily Injury, Property Damage or Personal/Advertising Injury caused by an accident.
DIRECTORS' & OFFICERS' LIABILITY ("D&O Insurance")	Financial Loss and Personal Injury caused by Wrongful Acts (wrongful management decisions).

CGL and D&O: Differences and Similarities

▪ DIFFERENCES

Commercial General Liability	Directors' & Officers' Liability
Covers Bodily Injury, Property Damage and Personal and Advertising Injury.	Always excludes Bodily Injury and Property Damage.
Covers accidents only. Claims usually arise directly from operations rather than governance (management decisions).	Covers Wrongful Acts. Claims usually arise from governance or management decisions. Board members, management staff and the organization itself are likely defendants.
Most often sold to nonprofits as an "Occurrence" policy.	Most often sold to nonprofits as a "Claims-Made" policy. In some cases D&O is available on an "occurrence" form.
Standardized policy wording. Most carriers use one of the forms issued by the Insurance Services Offices (ISO). The form number and ISO reference appear at the bottom of each page of the policy.	Non-standard policy wording-each insurer writes its own policy, which makes comparing policies more difficult.

▪ **SIMILARITIES**

Commercial General Liability	Directors & Officers Liability
Covers liabilities common to all nonprofits.	Covers claims alleging wrongful management acts that are common to all nonprofits.
Provides broad "catch-all" or basic liability coverage. Other liability coverages are more specific and narrower in scope.	Provides broad coverage for wrongful management acts.
Includes all board members, employees and volunteers as Insureds.	Same

CGL COVERAGE SECTIONS

- Coverage A - General Liability - Designated on the policy as "Bodily Injury and Property Damage"
- Coverage B - Personal And Advertising Injury Liability - Expands the scope of CGL coverage beyond bodily injury and property damage, strengthening its purpose in covering common liabilities.
- Coverage C - Medical Expense - Covers accidents arising from your premises or operations, regardless of your liability. Allows you to promptly compensate for minor injuries, and has the advantage of discouraging lawsuits. The standard limit is \$5,000 per person however some policies feature a higher limit for this no-fault accident coverage.

CGL LIMITS OF LIABILITY

- General Aggregate Limit (Other than Products-Completed Operations) - maximum amount payable during the policy term for all claims other than Products Liability and Completed Operations Liability
- Products/Completed Operations Aggregate Limit - maximum amount payable for liability for products you manufacture or sell; or construction or repair work you've completed
- Personal and Advertising Injury Limit - maximum amount payable for Coverage B
- Each Occurrence Limit - maximum amount payable for any one occurrence
- Damage To Premises Rented To You Limit - maximum amount payable for fire damage to the portion of your landlord's building that you occupy
- Medical Expense Limit - maximum amount payable for Coverage

What is Personal Injury and Advertising Injury Liability?

Personal Injury and Advertising Injury Liability covers liability for a group of specifically named offenses, which don't involve bodily injury or property damage, and aren't caused by an accident, but nonetheless cover liability exposures common to most organizations. These are liabilities for:

PERSONAL AND ADVERTISING INJURY LIABILITIES

- False Arrest, Detention, or Imprisonment
- Malicious Prosecution
- Wrongful Eviction or Entry by a Landlord
- Libel, Slander, or Disparagement of an Organization
- Invasion of Privacy through Spoken or Written Statements
- Unauthorized Use of an Idea in Advertising
- Infringement of Copyright, Product Image or Slogan in Advertising

Rather than being issued on a stand-alone basis, Personal Injury and Advertising Injury Liability is always written as *a component* of other types of liability coverage:

COVERAGE UNDER COMMERCIAL GENERAL LIABILITY

In 1986 Personal and Advertising Injury Liability was combined with General Liability and became Section B of the standard Commercial General Liability policy.

Exclusions include:

- Liability of insureds in the business of advertising, broadcasting, publishing, website consulting, or internet services
- Liability for Employment Practices

COVERAGE UNDER NONPROFIT DIRECTORS' & OFFICERS' LIABILITY

Personal Injury Liability for Employment Practices is included under most Nonprofit Directors & Officers Liability policies.

COVERAGE UNDER PROFESSIONAL LIABILITY

Personal and Advertising Injury Liability is included under Professional Liability policies designed for organizations in the business of advertising, broadcasting, publishing, website consulting, or internet services.

Other Liability Coverages

COVERAGE NAME	NEEDED IF...	COVERS
PROFESSIONAL LIABILITY	Your nonprofit provides professional services, including social services, educational services, legal services, medical services, counseling, or referral services. There are at least forty-one categories of "professional services" that can be covered under professional liability policies.	Claims alleging negligence in the delivery of professional services, and liability for injuries caused by failure to adhere to professional standards or duty of care required by a specific profession.
SEXUAL ABUSE LIABILITY	Your nonprofit provides services to a vulnerable client group: young people, persons with disabilities or the elderly.	Claims alleging sexual abuse of a client of your nonprofit.
SPECIAL EVENTS LIABILITY	Special events are excluded from your GL policy.	Bodily injury or product damage arising out of your event
WORKERS COMPENSATION	Your nonprofit has paid staff. Note: each state determines the minimum number of employees for which coverage is required.	Bodily Injury to employees while working for you. In some cases volunteers can be covered under workers compensation. If volunteers are not covered, purchase a volunteer accident policy.
AUTOMOBILE LIABILITY	Your nonprofit owns or lease private passenger vehicles, buses, vans or trucks	Bodily Injury and Property Damage caused by accidents involving vehicles you own or lease.
NON-OWNED/HIRED AUTOMOBILE LIABILITY	Your employees or volunteers use their own vehicles on your behalf or your employees or volunteers rent vehicles on a short-term basis.	Bodily Injury or Property Damage caused by accidents involving vehicles owned by or rented by employees or volunteers while driving on your behalf, but only when the limits on the vehicle being driven are insufficient to cover the cost of injury or damage.

EMPLOYMENT PRACTICES LIABILITY	Your nonprofit has employees.	Economic Injury to employees due to wrongful termination, sexual harassment, wrongful failure to hire or promote, wrongful demotion, illegal discrimination, retaliation or economic injury stemming from any employment action that is illegal under state or federal law. Almost all carriers exclude FLSA claims under the EPL policy; some provide a very moderate (\$50,000 to \$150,000) sublimit for defense costs only.
EMPLOYEE BENEFITS LIABILITY	Your nonprofit provides health insurance, life insurance or similar benefits to employees.	Financial injury to employees resulting from negligent administration of employee benefit plans.
FIDUCIARY LIABILITY	Your nonprofit has a pension plan.	Breach of duties under Employee Retirement Income Security Act of 1974.
LIQUOR LIABILITY	Your nonprofit sells liquor at fundraising or social events.	Bodily Injury and Property Damage that results from your negligence in contributing to intoxication of guests or participants.
WATERCRAFT LIABILITY	Your nonprofit owns watercraft, or rents or operates a watercraft more than 25 feet long	Bodily Injury or Property Damage caused by accidents involving watercraft your nonprofit owns, leases or rents.
CYBER LIABILITY	Your nonprofit has a website, publishes online, stores confidential data on cloud servers or that is accessible online, etc.	First- and third-party claims from e-business, Internet use, networks and informational assets. May cover claims alleging violation of privacy, the infringement of intellectual property, virus transmission, or any other losses from online activity.

Expansive Liability Coverages

COVERAGE NAME	COVERAGE
UMBRELLA / EXCESS LIABILITY	Provides additional limit of liability above the policy limits of other liability coverages. Coverage is triggered if underlying policy limits are exhausted by claim payments.

FOREIGN LIABILITY	Provides coverage for claims made outside the territorial limits of other liability policies. Coverage is usually needed only for regular or permanent operations outside of the US, its territories or Canada.
TERRORISM LIABILITY	Adds coverage to other liability policies coverage against claims alleging failure to take adequate precautions for terrorist attacks.

How Much Liability Insurance Does a Nonprofit Need?

Unless it has the financial resources to survive uninsured lawsuits, a nonprofit arguably needs coverage for all its insurable liability exposures. This almost always includes Commercial General Liability and Directors' & Officers' Liability, and might include more specific types of liability depending upon the nature of a particular nonprofit's operations.

A nonprofit may also need liability insurance to comply with the requirements of contracts with funders, landlords or partner organizations or statutes.

LIABILITY INSURANCE REQUIRED BY STATUTE

Workers Compensation

Required for employers in all 50 states. Exemptions - Some states exempt very small employers (including nonprofits) from the requirement to purchase Workers Compensation coverage. Pennsylvania provides no numerical exception, which means that all employers must purchase this coverage.

Penalties for non-compliance, depending on the state, include fines, criminal prosecution, revocation of corporate charter, and / or imprisonment.

Automobile Liability

Required for vehicle owners in 45 states, including Pennsylvania. Exception states - New Hampshire, Virginia, South Carolina, Wisconsin and Tennessee.

When is Liability Insurance Required by Contract?

Type of Contract	Coverage Usually Required
Government Funding	General Liability, Workers Compensation, Automobile Liability and Professional Liability
Mortgages	General Liability

Office or Real Estate Leases	General Liability
Vehicle Leases	Automobile Liability
Office Equipment Leases	General Liability
Contracts for Use of Property for Special Events	General Liability (sometimes written short-term under the name Special Event Liability)

What is General Liability?

General Liability insurance covers liability for bodily injury and property damage caused by an accident, except for liabilities specifically excluded. Coverage applies at your premises, or anywhere else in the United States, its territories, or Canada.

Prior to the 1960's the liability exposures of almost any organization could be covered completely by the combination of General Liability, Automobile Liability, and Workers Compensation. Today other types of liability coverage are needed because changes in the law have created new liability exposures beyond the scope of the traditional General Liability policy.

GENERAL LIABILITY CLAIMS EXAMPLE

No one at the small nonprofit drug rehab in rural Pennsylvania knew that their nearest neighbor, a ranch owner two miles away, had purchased a \$200,000 racehorse. Even if they had known, they'd hardly have considered the horse a liability exposure. The exposure became apparent when one of their resident patients `escaped' from the center, stole the horse, and while galloping across a highway was hit by a car. The horse was killed and the resident was severely injured. This event led to two separate lawsuits against the rehab center. The first lawsuit was brought by the resident's parents for bodily injury caused by alleged negligent supervision, and the second suit was brought by the rancher for the loss of his horse.

Not surprisingly, none of the rehab's liability policies provided specific coverage for injuries caused by riding a horse, or for horse mortality, but the rehab was covered for both lawsuits under its General Liability policy. With General Liability it's not necessary to anticipate whether you have a liability exposure for stolen race horses; you need only anticipate whether you have exposures that are specifically excluded under your policy.

EXCLUSIONS UNDER THE STANDARD GENERAL LIABILITY POLICY

▪ EXPOSURES CONSIDERED UNINSURABLE

- expected or intended injury
- contractual liability
- liability due to war
- damage to products you manufacture or repair, caused by faulty workmanship
- damage to the particular part of any real property that you or your subcontractors have worked on, caused by faulty workmanship

▪ EXPOSURES THAT SHOULD BE COVERED UNDER ANOTHER LIABILITY POLICY

- auto, watercraft and aircraft liability
- injury to employees
- liquor liability
- pollution liability
- liability due to transporting or racing mobile equipment

▪ EXPOSURES THAT SHOULD BE COVERED UNDER A PROPERTY POLICY

- damage to property owned by you
- damage to property in your care, custody or control

Underwriters generally add "endorsements" to all General Liability policies. An endorsement either excludes or expands coverage. The scope of coverage under any General Liability policy will depend upon the particular exclusions and enhancements added to the standard policy.

CLAIMS CATEGORIES

TYPICAL GENERAL LIABILITY CLAIMS CATEGORIES

- injuries arising from your premises
- injuries to clients under your supervision
- injuries to volunteers while working for you
- injuries to guests at special events
- injury caused by products you sell or manufacture
- fire damage to your landlord's building
- damage to property not owned by you or in your possession

What is Nonprofit Directors' and Officers' (D&O) Liability Insurance?

Directors' & Officers' Liability (also known as D&O insurance) covers liability for economic damages resulting from errors or omissions in the governance or management of an organization.

The first D&O policies were introduced in the 1960's and marketed to for-profit corporations to cover shareholder lawsuits. By the 1970's nonprofits began to purchase D&O coverage. At first nonprofit and for-profit D&O policies were identical, but over time underwriters improved nonprofit coverage in several stages, expanding the definition of insured and deleting policy limitations and exclusions. The motivation for improving nonprofit coverage wasn't any special nonprofit liability exposure, but rather just the opposite: there were almost no nonprofit claims, so underwriters saw little risk in broadening coverage in order to sell more coverage and increase "market share".

The policies started to be very useful in the 1980's with the emergence of employment practices litigation, which still accounts for an estimated 80% of all nonprofit D&O claims.

Similar to General Liability, Nonprofit D&O covers all liabilities except those specifically excluded. The difference is that General Liability covers bodily injury and property damage only, and D&O Liability covers Wrongful Acts ("wrongful management decisions"), always excluding bodily injury and property damage.

NONPROFIT D&O EXCLUSIONS

Each insurance company uses its own unique policy wording, and coverage can vary significantly. Nonetheless there are common exclusions in Nonprofit D&O policies:

EXCLUSIONS COMMON TO NONPROFIT D&O POLICIES

- Bodily Injury
- Property Damage
- Theft
- Criminal acts
- Deliberately fraudulent acts
- Pollution
- Nuclear reaction or radiation
- Litigation pending prior to the original inception date of the policy

Many other exclusions can be built into or added by endorsement to Nonprofit D&O policies.

Employment-related claims that often trigger coverage under the EPL section of a D&O policy include claims alleging: wrongful termination, sexual harassment, discrimination based on a protected class under federal or state law, and breach of an employment contract, illegal retaliation.

NON-EMPLOYMENT D&O CLAIMS EXAMPLES

- Misallocation of Funds
- Breach of Fiduciary Responsibilities
- Self-Dealing / Conflict of Interest
- Anti-trust or Restraint of Trade Violations
- Third Party Discrimination, Defamation, or Invasion of Privacy
- Negligent Financial Advice to Third Parties
- Failure to Maintain Insurance
- Tortious Interference with Contract
- Competition between Associations
- Breach of Contract
- Failure to Accredite or Certify
- Infringement of Trademark, Patent or Copyright
- Opposition to Rule-Setting

What is Professional Liability Insurance?

Professional Liability Insurance, also known as Errors & Omissions Liability Insurance or Malpractice Insurance, covers liability for the higher standard of care required of professionals when providing services in their area of expertise. The higher standard of care required of professionals is that they must have the same expertise and competencies common to members in good-standing of their profession.

Traditionally professional liability was limited almost exclusively to the legal and medical professions, but starting in the 1960's courts began to hold a much wider range of service providers to a professional standard of care. Insurance companies responded to these new exposures by adding professional liability exclusions to General Liability and Directors & Officers Liability policies, and by developing separate Professional Liability policies on a variety of formats.

THE NEED FOR PROFESSIONAL LIABILITY

Today almost any class of service provider can be held to a professional standard of care. For example, does a plumber need professional liability? If a plumber were to accidentally flood your home you might feel entitled to compensation based on your expectation that a plumber, rather than being merely reasonable, should have knowledge and skills similar to other plumbers. In other words you might feel entitled to hold the plumber to a professional standard of care.

Whether a particular service provider in a particular situation can be held to a professional standard of care is a legal question that can only be answered definitively in a court of law, but answering that question usually isn't necessary for insurance purposes.

The relevant question for insurance purposes is -

Does your nonprofit client provide services that are excluded under your General Liability and Directors & Officers Liability policies?

If the answer is 'yes' your nonprofit may need a Professional Liability policy.

SOME ADDITIONAL CONSIDERATIONS

- Regardless of policy exclusions General Liability won't cover: 1) emotional distress unless arising from bodily injury 2) financial loss unless arising from bodily injury or property damage or 3) property damage to intangible property (such as information stored in a computer). These exposures usually need to be covered under a Professional Liability policy.
- Directors & Officers Liability can sometimes cover incidental Professional Liability (for example for volunteer accountants or lawyers) but policy exclusions need to be examined closely.

Never assume that because you have a Professional Liability policy you're covered for all your Professional exposures. There are a great many Professional Liability formats with varying levels of coverage. The scope of your policy and its exclusions must be compared with the services you provide. As is the case for all coverages, seek the advice of a specialist insurance agent or broker.

EXAMPLES OF PROFESSIONAL LIABILITY EXPOSURES FOR COUNSELORS AND SOCIAL WORKERS

Allegations of:

- Breach of Confidentiality
- Failure to Warn Third Parties
- Failure to Prevent Suicide
- Failure to Diagnose
- Improper Child Placement or Removal
- Failure to Protect
- Negligent Counseling
- Negligent Referral
- Wrongful Abandonment
- Negligent Supervision
- Failure to Receive Informed Consent

What is Non-Owned Auto Liability Insurance?

Non-Owned Auto Liability Insurance covers liability for accidents caused by an employee or volunteer driving their own vehicle on a nonprofit's behalf. The coverage is designed to protect only the nonprofit organization, not the employee or volunteer. Coverage applies above the liability limits of the vehicle owner's personal automobile policy. There's no coverage for damage to the employee or volunteer's vehicle.

All personal automobile liability policies automatically cover anyone named in a covered lawsuit, including the vehicle owner's employer. Non-Owned Auto Liability therefore is excess coverage, designed to cover only when the nonprofit is named in a lawsuit and the damages are higher than the vehicle owner's policy limits, or when the vehicle owner has no personal auto liability in force.

ADDITIONAL CONSIDERATIONS:

- 'For Hire' Exclusion - Personal automobile policies exclude vehicles being used as a "public or livery conveyance". To avoid the possible enforcement of this exclusion, fees should never be charged for the use of employee or volunteer-owned vehicles.
- Increased Personal Auto Premiums - There's a possibility that a 'Business Use' classification could be applied to the personal auto policies of employees or volunteers driving their vehicles on your behalf, resulting in a premium increase. Usually the Business Use rate is charged only if the vehicle is used on a "regular basis" on your behalf.
- Underwriting Requirements - As a condition of coverage, underwriters may require all vehicles driven on your behalf to have personal auto liability limits of at least \$300,000, or higher. Underwriters may also require an annual review of Motor Vehicle Records for all drivers.

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