Nonprofit
Risk Management
Center

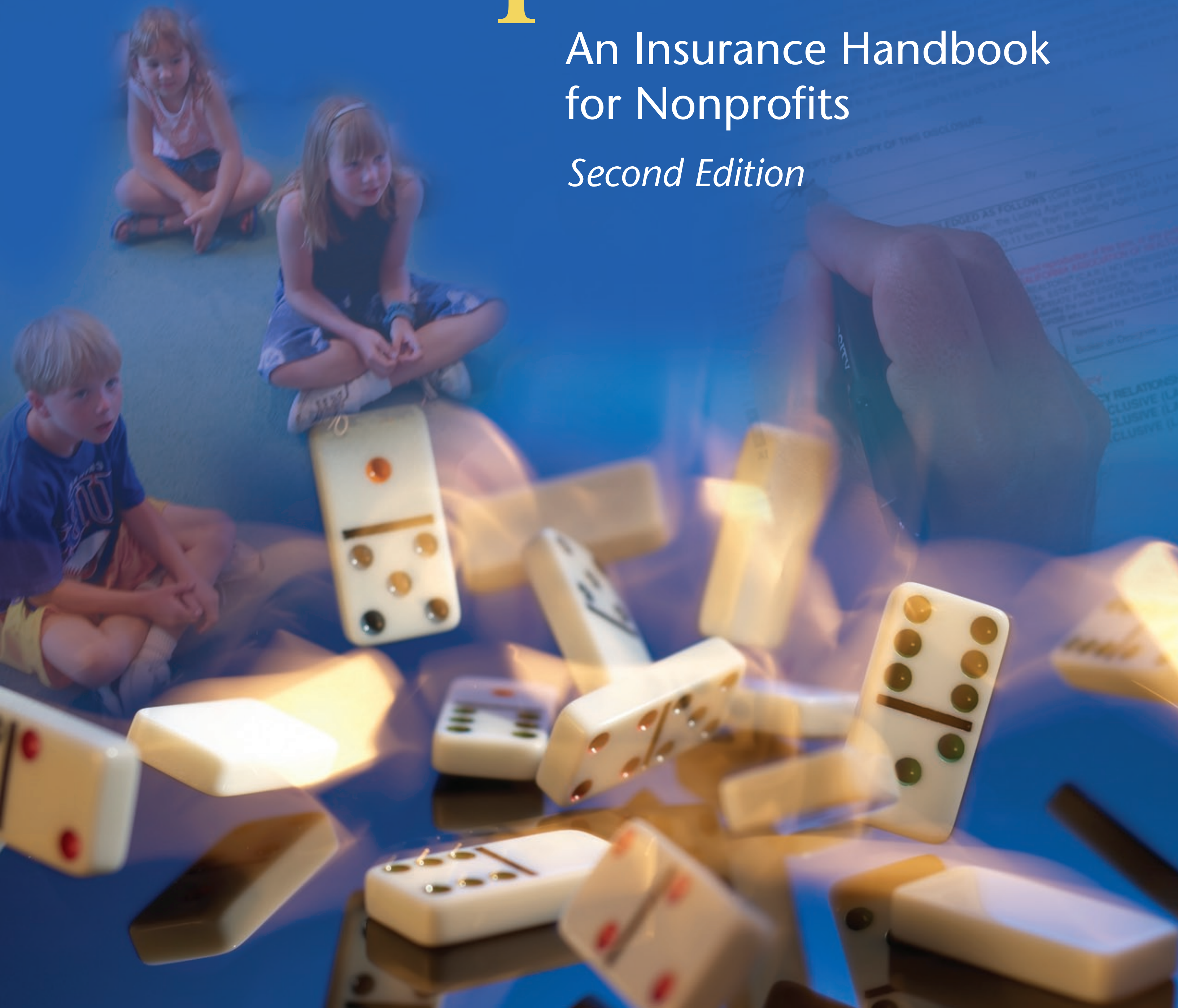
… find the answer here

PUBLIC ENTITY RISK INSTITUTE
PERI

Coverage, Claims and Consequences:

An Insurance Handbook for Nonprofits

Second Edition



Coverage, Claims and Consequences:

An Insurance Handbook for Nonprofits

Second Edition

by Melanie Lockwood Herman

Contributing authors:
David Szerlip, Michael J. Moye, Leslie T. White,
Ralph J. Blust, Kevin A. Henry, William R. Henry, Jr.,
Steven Moody and Tony Trivella

Nonprofit
Risk Management
Center

… find the answer here

PUBLIC ENTITY RISK INSTITUTE
PERI

Coverage, Claims & Consequences
An Insurance Handbook for Nonprofits

2nd Edition

Melanie Lockwood Herman, Editor

Contributing authors:
Michael J. Moye, Ralph J. Blust, Kevin A. Henry,
William R. Henry, Jr., Steven Moody,
David Szerlip, Tony Trivella and Leslie T. White

ISBN 1-893210-02-2

Nonprofit Risk Management Center

… find the answer here

The Nonprofit Risk Management Center is dedicated to helping community-serving nonprofits conserve assets, prevent harm, and free up resources for mission-critical activities. The Center provides technical assistance on risk management, liability, and insurance matters; publishes easy-to-use written resources; designs and delivers workshops and conferences; and offers competitively priced consulting services.

The Center is an independent nonprofit organization that does not sell insurance or endorse specific insurance providers. For more information on the products and services available from the Center, call (202) 785-3891 or visit our Web site at www.nonprofitrisk.org.

Nonprofit Risk Management Center
15 N. King Street, Suite 203
Leesburg, VA 20176
(202) 785-3891
Fax (703) 443-1990
www.nonprofitrisk.org

Staff
Jennifer Chandler Hauge, *Senior Counsel and Director of Special Projects*
Melanie Lockwood Herman, *Executive Director*
Sue Weir Jones, *Office Manager*
Michael J. Moye, *Project Manager*
John C. Patterson, *Senior Program Director*

PUBLIC ENTITY RISK INSTITUTE PERI

Public Entity Risk Institute
The Nonprofit Risk Management Center is grateful for the support of the Public Entity Risk Institute (PERI), which provided a generous grant to support the cost of publishing this book. PERI is a tax-exempt nonprofit whose mission is to serve public, private and nonprofit organizations as a dynamic, forward thinking resource for the practical enhancement of risk management. For more information on PERI, visit the organization's Web site: www.riskinstitute.org.

Editor's Note
The Nonprofit Risk Management Center gratefully acknowledges the contributions of the insurance industry professionals who wrote various coverage sections of this book. The subject of insurance is complex and dynamic, and consensus is rare on many of the topics addressed in the pages that follow. Except where an individual author is referenced, the information presented in this book was written by a staff member of the Nonprofit Risk Management Center and the opinions expressed herein are those of the Center.

— Melanie Lockwood Herman

Acknowledgments
The Center extends its thanks to the following persons who authored sections of this publication:

- Ralph J. Blust, High Performance Programs Group
- Kevin A. Henry, ACE USA International
- William R. Henry, Jr., CIMA Companies
- Steven Moody, Alliance of Nonprofits for Insurance, Risk Retention Group
- David Szerlip, David Szerlip and Associates
- Tony Trivella, The Hartford Steam Boiler Inspection and Insurance Company
- Leslie T. White, Croydon Consulting

Table of Contents

Table of Contents

Sidebars

3

Managing Your Insurance Program

The trouble with people is not that they don't know but that they know so much that ain't so.

—Josh Billings (1818–85)

In the fields of observation chance favors only those minds which are prepared.

—Louis Pasteur (1822–95)

WHO IS RESPONSIBLE FOR HARM OR LOSS?

While considering how a nonprofit manages its risks, it is important to give some thought to who will be responsible from a financial standpoint if a loss occurs despite efforts to prevent one. Doing so helps identify both potential sources of claims, as well as some of the insurance-related matters that must be addressed as part of the nonprofit's insurance program. There are a number of possible responsible parties: the injured party, the individual causing the harm in question (not the nonprofit), another organization, or the nonprofit itself. Which party is held responsible depends on the circumstances.

The Injured Party

It is important to remember that not all persons who are injured while participating in an organizational activity seek payment for their medical expenses and/or pain and suffering. In most cases, individuals who are harmed accept responsibility for the accidents in which they were involved. Consider the example of the client who falls while walking down a set of steps and attributes the fall to "the fact I was daydreaming." Although it is easy to become cynical after your nonprofit has been sued a few times, the reality is that most people who suffer injuries readily admit it is their own fault.

The Individual Causing the Harm

In some cases, the individual whose actions led to the injury or loss will be held responsible. This would be true in the case of a volunteer found to be acting outside the scope of his duties and responsibilities as a coach for a nonprofit when he sexually molested a young athlete who was visiting his home. The nonprofit is least likely to be held responsible when it is clear the organization had strict rules forbidding out-of-program contact between athletes and coaches, the parents of the victim knew about the rule, and the nonprofit's screening process was found to be reasonable. Or in the case of a skier injured while participating in a charitable downhill event, the waiver signed by the participant could protect the nonprofit by placing the risk of harm squarely on the shoulders of the participant in the event. Waivers and other liability shields can be effective in transferring risk away from the organization that requires their execution, but they must be carefully drafted and used appropriately. Since state courts interpret liability shields and decide whether to uphold them, a nonprofit that uses such documents should be familiar with the standard of scrutiny applied to waivers by its state's courts.

Another Organization

From time to time a nonprofit will enter into a contractual arrangement whereby the other party to the agreement consents to assume the risk of financial loss. For example, a nonprofit that owns a renovated 19th century train depot may rent out its facility to neighborhood organizations. However, the rental contract provides that the renting party assumes the risk of harm occurring during its occupancy of the facility, including injuries to persons attending the neighborhood organization's event. Or in an agreement with an independent contractor, the nonprofit may obtain the contractor's agreement to indemnify the organization should a suit be filed against the nonprofit based on the work being performed by the contractor. Conversely, the nonprofit that rents a hotel ballroom for a major fund-raising event will want to make sure the hotel has sound loss-prevention and safety practices in place.

The Nonprofit Itself

There are myriad circumstances in which a nonprofit could be held legally responsible for the cost of harm resulting from its activities, programs or operations. For example, an organization might be responsible for an injury suffered by a client of a day-care center after it is determined that the organization's negligent screening, selection and supervision of teachers at the facility was the proximate cause of a child's injury. Or a nonprofit might be held responsible for injuries caused by a volunteer who was negligent in helping a client exit a wheelchair-equipped van. In the latter case, the state's volunteer protection statute might protect the volunteer from personal liability, while ensuring that the nonprofit is held accountable.

ASSIGNING RESPONSIBILITY FOR THE INSURANCE PROGRAM

The board of directors and the executive director of a nonprofit are responsible for making certain that there is sound financial backing of the nonprofit so that it can fulfill its mission. Proper precautions—and some common sense—are essential to managing risk. Creative modifications (imposing restrictions on activity time, place and manner) may simultaneously improve the quality of service, reduce the chance of harm, and increase the odds of better-than-expected outcomes. Responsibility for day-to-day activities associated with the organization's insurance program may fall on the shoulders of any number of staff members. In very small organizations, the executive director may retain this responsibility and work directly with outside insurance advisors. In midsize to large nonprofits, a deputy director, director of operations, finance director/CFO/ controller, or a human resources director may be asked to handle the nonprofit's insurance program. In very large organizations, or those with special risk management needs based on activities or facilities (for example, recreation programs with swimming pools), a full-time professional risk manager may be hired to coordinate safety, risk management and insurance purchasing activities. Some of the nation's largest nonprofits have risk management departments staffed by teams of professionals. In general, a risk management department is most likely to be found in a large national nonprofit that has hundreds of staffed affiliates, numerous real-estate holdings and other assets.

Risk Management Tutorial for Nonprofit Managers

A resource at your disposal! Complete a free online risk management tutorial based on *Mission Accomplished*, a former best-selling book and companion workbook published by the Nonprofit Risk Management Center. Completing this risk management tutorial is an easy way to begin integrating the principles of risk management into the day-to-day operations of your nonprofit. Visit http://nonprofitrisk.org/tools/basic-risk/basic-risk.shtml

Tag, You Are It

Congratulations! You may be the person that the executive director or board of directors has tagged as the one who, from this day forward, will be responsible for managing your nonprofit's insurance program. Before this new assignment, insurance and risk management may have been distant concepts that you once heard mentioned at a seminar. Now, you are expected to bring your organization into the 21st century by formulating a comprehensive insurance program for the first time. So what do you do?

First, do not panic. It is possible to survive this assignment and even enjoy it. The key is to organize your activities and define your tasks and responsibilities clearly. Although many organizations only focus on the insurance aspect of risk management, the Nonprofit Risk Management Center encourages you to expand the assignment to encompass all of the organization's efforts to manage risk, including activities directed at insurable and uninsurable risks. Many of the activities required to manage your insurance policies are useful in establishing a risk management program.

The following sections offer insight and guidance on what you need to do to manage an insurance program effectively. The Nonprofit Risk Management Center uses the descriptor, "insurance program manager," to identify the person responsible for the insurance program. We are not referring to a specific job title, rather, to a responsibility. This chapter explains thoroughly the various duties and responsibilities for a nonprofit insurance program manager. Tailor the duties, responsibilities and tasks to meet your organization's needs and your level of expertise. As you learn and become more comfortable with the assignment, you may want to expand your activities.

Insurance Program Manager's Qualifications

For most people other than professional risk managers, the management of an insurance program falls under the "other duties as assigned" portion of their job description. However, as you will learn, the task involves far more than occasional activities around policy renewal time. To clarify your responsibilities and expectations, develop an insurance or risk management addendum to your current job description. It is not mandatory that you walk on water, but you are not allowed to stay on shore either.

Risk management and insurance touch every aspect of an organization—the organization's services and programs, fundraising activities, special events, and administrative operations. Due to the breadth of the insurance function, it is inappropriate for an organization to vest total responsibility for an effective insurance program entirely in the hands of one person. While good management practice requires one person to be responsible ultimately for risk management and insurance (the buck has to stop somewhere), individuals at all levels of the organization should have both the opportunity and obligation to support efforts that reduce exposure to financial and other losses. Many people (including yourself) may view risk management and insurance as an overly technical subject, but the most relevant portions of any risk management program are based on common sense, educated projections about the future, and sound management practices. Convincing the board, senior managers and other personnel of the importance of risk management and insurance to the successful operation of your organization is a vital part of your responsibilities. You need to be both a manager and coach to engage others in the insurance function. You must not only get your feet wet but you must also learn to beckon to others convincingly with, "Come on in. The water is fine."

Reporting Relationship

A comprehensive insurance program is critical for many nonprofits. Insurance is the financing tool of choice for many small nonprofits and most midsize to large nonprofits, and the major source of funding for insurable losses. Since insurance is often essential to the success and survival of an organization, the board or executive director should assign its responsibility to a senior manager. In some organizations, the board holds the executive director or chief executive officer accountable for the insurance program. Other organizations delegate the responsibility to the chief financial officer, chief administrator, or general counsel. In larger organizations, the designated executive then delegates the responsibility to a direct report manager. Regardless of the size of the organization, the designated insurance program manager should be an employee with authority to act on behalf of the organization. Volunteers and others can assist the insurance program manager, but the manager should have the power and authority to act when needed. It is a disservice to the organization and the individual to delegate insurance matters to a lower-level or clerical employee. The insurance program manager needs the full support of the board, senior management, and all operating units and personnel to be effective.

Background or Experience

Ideally, the appointed insurance program manager should have some previous experience in risk management or insurance. In practice, though, the designated person rarely has these qualifications but needs to be willing (and eager) to learn. Community colleges, insurance agent associations (National Association of Professional Insurance Agents or Independent Insurance Agents and Brokers of America), insurance educational organizations (Insurance Institutes of America, The National Alliance for Insurance Education & Research–Society of Certified Insurance Counselors) and other groups offer insurance and risk management courses.

The insurance program manager also needs to be knowledgeable about all aspects of the organization since insurance touches all segments of it. The manager needs to know what the various departments and programs are doing now and plan to do in the future to ensure that the insurance program meets the organization's needs. The other departments should consider the insurance program manager as a resource, not a hindrance, in accomplishing their departmental goals and fulfilling the nonprofit's community-serving mission.

Management experience and ability are important characteristics for a successful insurance program manager. The person must first manage his or her time and responsibilities and must also be able to work well with other people within the organization. An insurance program is a complex project that takes time, requires special knowledge and expertise, and needs a manager with a cooperative, helpful approach in dealing with others.

RISK MANAGEMENT AND INSURANCE PHILOSOPHY

Every nonprofit should establish its policy and philosophy on risk management and insurance. One option is to create a formal, risk-management policy statement declaring the purpose and goals of the risk management program. The policy can incorporate the nonprofit's insurance and risk-financing strategy. At a minimum, the organization should decide on a risk-financing strategy and incident response plan and delineate the role of insurance within it.

Establish Your Risk-Financing Strategy

Your nonprofit's risk-financing strategy involves identifying the sources of funds available to pay for losses. The strategy will be a blend of retention (internal funds) and sharing or transfer (external funds) techniques. Retention is when the money comes from within the organization. You can use operating income to pay for uninsured losses or establish reserve funds. Another retention technique is to use a captive insurance entity to pay losses. A captive is a form of retention because the organization has not transferred the financial risks to an entity outside of the organization.

Commercial insurance is the most common external sharing technique. Insurance transfers the financial aspect of a loss to an entity (insurance company) outside of your organizational family. The insurance transaction enables the nonprofit to transfer its uncertainty of loss to another in exchange for the payment of premium. As discussed in Chapter 1, the role of insurance in your overall risk-financing strategy depends upon the goals and mission of the organization. Many nonprofits use insurance in some way; your organization needs to decide how it will use this tool.

Risk Financing Strategy

Does your nonprofit have a clearly-defined risk financing strategy, which describes the nonprofit's philosophy about paying for losses and the tools that the organization intends to use to pay for losses? If not, consider developing a risk financing strategy. For example:

[Name of Nonprofit] is committed to protecting its financial and human assets to the greatest extent possible. [Name of Nonprofit] will seek to eliminate or reduce as much as practicable the conditions, activities, and practices that cause insurable and uninsurable losses. The organization will purchase insurance to provide indemnity for catastrophic losses and will decide, based on an analysis of the best interests of the organization, to either insure or retain those risks not considered of major importance to mission-critical operations and financial well-being. The board will receive an annual insurance stewardship report summarizing its insurance program, any significant losses and any changes made to the program during the prior year.

The insurance strategy selected will determine to what extent the nonprofit is going to use insurance to fund its losses. Many large organizations only use insurance to fund their catastrophic exposures. These organizations establish reserve funds to pay for the smaller losses (amount varies by organization) and tap their insurance coverage to pay for losses in excess of their retention. The nonprofit may then purchase excess insurance to pay for the catastrophic losses. For example, a nonprofit may decide to retain the first $100,000 of any general liability loss—paying out of its own funds for any loss up to $100,000.

If a loss reaches or exceeds the retained limit, the insurer pays the balance up to the policy limit. There are many ways to structure a large deductible or excess program. Each organization needs to assess it own financial resources to determine its appropriate mix of retention and transfer.

There are many ways to structure a large deductible or excess program. Each organization needs to assess its own financial resources to determine its appropriate mix of retention and transfer.

Smaller nonprofits rely on insurance to pay the midlevel, as well as catastrophic losses. However, you can purchase insurance for just about anything if you are willing to pay the price. Lloyd's of London is renowned for insuring unique and unusual risks, such as Betty Grable's legs or a concert pianist's hands. Earthquake insurance is available everywhere in the United States but few organizations on the East Coast purchase coverage even though the Mid-Atlantic region is on a fault line. You could allocate a substantial portion of the organization's financial resources to insurance, but that may not be the best use of resources or most appropriate risk-financing strategy. Each nonprofit has to establish guidelines for when it is prudent to purchase insurance for an insurable exposure.

One possibility is to consider purchasing insurance only for catastrophic losses; you need to define the catastrophe level for your organization. Another alternative is to retain those risks not considered of major importance to the financial position or well-being of the nonprofit. You should establish the retention level for those losses that the organization can afford to pay. Deductibles are a retention technique in which the insured pays the first dollar-amount of a loss. Most types of insurance policies include a deductible. One common deductible exists under the commercial property coverage for any loss to buildings or business personal property (usually at least $250 with $1,000 common for larger organizations). All automobile policies have physical damage deductibles for comprehensive and collision coverages. You will also find deductibles applicable to all property and inland marine coverages—computers, fine arts, cameras, business interruption, and transportation policies. Many insureds will have a deductible under the commercial general liability policy for property damage losses. There may also be some exposures that the chance of loss is low and the potential cost is minimal so you decide to retain the risk of loss entirely.

Another strategy is to insure whatever portion of a risk that the premium cost makes economically attractive (cost effective). For a nonprofit, insurance often raises the problem of availability or affordability. Nonprofit directors' and officers' insurance was once unavailable and was very expensive when first introduced. Similarly, many years ago, insurance companies attached exclusions for losses caused by sexual abuse and molestation and, again, when the coverage first became available, it was very expensive. Some nonprofit organizations are involved in high-risk activities that many insurance companies seek to avoid insuring. Often, insurance companies closely underwrite or avoid any entity that deals with animals (humane societies, animal rescue, and farm operations), while others stay away from sports activities and programs. Since your insurance-buying decisions are affected by the availability of the coverage and its cost, you need to establish an insurance-costs threshold.

Also, do not forget to review your risk-financing strategy periodically. As your nonprofit evolves, it needs to revise its corporate policies and strategies. Likewise, as the organization grows, it may consider increasing its retention levels or purchasing insurance coverages it deemed unaffordable a few years earlier.

RISK MANAGEMENT COMMITTEES

A risk management committee is a group of people charged with developing and overseeing an organization's risk management program. Nonprofits of all sizes are increasingly turning to risk management committees as an important resource. Risk management committees can be found in small nonprofits, where they may act in the place of a staff designee, and in midsize and larger nonprofits, where they work in partnership with a staff designee, such as a finance director or professional risk manager.

A typical risk management committee has three primary responsibilities:

1. identify the organization's exposures,
2. develop a risk control program, and
3. establish a risk-financing strategy.

A handful of very large nonprofits employ full-time, professional risk managers to coordinate such risk management activities as loss control efforts, claims reporting, insurance purchasing, and safety program implementation. Some organizations use an outside advisor to assist in creating a risk management program; but for the vast majority of nonprofits, budget limitations rule out the use of risk management professionals.

Who Should Serve on the Committee?

Who serves on your risk management committee will depend on your program's operations and unique risks. For some organizations, a committee composed of the insurance program manager, director of volunteers, a program volunteer, an attorney, and insurance professional would be appropriate.

A nonprofit should try to tap people with a range of expertise and first-hand knowledge of the organization's operations. The most effective committee includes people with knowledge of and experience with the nonprofit's operations, future programming plans, legal structure, and operating procedures.

What Are the Committee's Core Responsibilities?

The risk management committee is responsible for all phases of an organization's risk management program—from development through implementation and monitoring.

Once the organization decides to establish a risk management committee, the first step is to select the members of the committee. The members then create a work plan for developing and implementing the organization's risk management program. The work plan

Risk Management Committees

- If a Risk Management Committee does not currently exist, determine whether there is an existing committee that could be re-purposed or broadened to take on risk management issues, or whether it makes more sense to create a separate committee for this purpose.
- Determine the appropriate makeup of the committee. Are there essential positions versus flexible positions on the committee? For example, some nonprofits determine that having the organization's legal and insurance advisors on the committee is absolutely necessary, but the participation of various staff members can change.
- Establish an appropriate mission and work program for the risk management committee. What tasks will it take on? How often will it meet? What are the immediate or top priority assignments for the committee? In some nonprofits a top priority might be overseeing the bidding process for the nonprofit's insurance program.
- Consider the reporting structure and format for the risk management committee. How will the decisions or actions of the committee be reported to the board and how often?

Source: *What's the Board Got to Do With it? The Vital Link Between Good Governance and Risk Management,* Melanie L. Herman http://nonprofitrisk.org/library/articles/board091004.shtml will spell out the committee's ongoing responsibilities, which may include any or all of the following:

- developing, for board approval, an organizational risk management policy that affirms the organization's commitment to safeguarding its assets.
- establishing the nonprofit's risk management goals (for example, ensuring its survival, maintaining essential operations or providing humanitarian services).
- identifying the organization's risks and establishing the risk management priorities.
- selecting the best risk management techniques (avoidance, modification, retention or sharing) for the priority risks.
- recommending appropriate risk-financing alternatives.
- communicating the agency's risk management plan and loss control procedures to the board of directors, employees, volunteers, clients and the other stakeholders.
- selecting an insurance advisor (a broker, agent or consultant) and negotiating insurance arrangements.
- overseeing loss prevention and control activities.
- providing an annual risk management report to the board of directors.

SETTING RISK MANAGEMENT GOALS

Setting goals for a risk management program is critical for several reasons. First, overall goals set a tone for the program. The goals communicate to the people affiliated with the organization the importance of safeguarding the organization's vital assets. Goals also offer benchmarks by which people can judge their behavior and the needs of the organization.

A nonprofit's risk management goals will vary based on the circumstances facing the organization and the genesis of the interest in risk management. Risk management goals focus on both pre-loss (operational) and post-loss (recovery) objectives. The pre-loss objectives include economy of operation, tolerable uncertainty, legality and humanitarian conduct. Post-loss objectives include humanitarian conduct, organizational survival, and continuity of operations. Other post-loss objectives focus on the desired financial condition of the organization after suffering a loss.

Each organization has a different level of uncertainty it can tolerate. Some nonprofits are risk averse and take almost extraordinary steps to prevent a loss, while other organizations are dare devils and give little thought to loss prevention and control activities. The risk management program needs to address the organization's comfort level for the uncertain financial consequences of potential losses. An effective risk management program will not only make people aware of potential losses but also assure them that the risks are being managed effectively.

As with all goals and objectives, there are inherent conflicts. The goal of operating economically can be a hindrance to the expenditure of any funds for risk management activities since that money could be used for programs.

However, the board should consider the long-term implications of various risk management decisions. As the governing and policy-making body, the board must address these conflicts and select the objectives to incorporate into the risk management program.

ORGANIZING YOUR INSURANCE FILES

Insurance records are vital to your organization's well-being. An insurance policy is a contract. Policy language is legalistic and may be the future subject of litigation—in order to have the courts decide what the policy really says. Ideally you will never be in litigation with your insurers, but if you are, you will want the original policies and relevant correspondence. The outcome of a dispute may hinge on the quality and relevance of your documentation. A significant part of the insurance program manager's job is to maintain complete insurance records. The records include insurance request specifications and subsequent winning proposals, the policies (current and past), all correspondence, claims information (loss notices, correspondence and payments), property appraisals, and other pertinent documents.

Maintaining information about your nonprofit's insurance coverage in neatly ordered up-to-date files is well worth the investment of time that is required. Well organized files make checking on policy wording or retrieving crucial information a simple task rather than an excruciatingly painful search through mountains of paperwork. Maintain each policy and any attendant documentation specific to that policy in a separate folder. Buy stiff folders that include a tab that you can label. Label the file with the following information:

- The policy name (for example, CGL or Miscellaneous Professional Liability)
- The policy dates (for examples, 10/1/08–10/1/09)
- The carrier (for example, National Union)

Use a two-hole punch to make holes at the top of the folder, allowing you to attach paperwork using a metal clasp that will accommodate many pages of documentation.

Attach the original application and policy language to the right side of the folder, with the policy language (beginning with the Declarations or dec page) on top. On the left side of the folder, attach any correspondence with the broker or carrier. Put correspondence in chronological order, with the most recent items on top. The very top sheet (or two) should be blank ruled paper on which you should note the substance and date of contacts with your insurance professional. Example of a note would be: "Called Broker Bob to request Certificate of Insurance for Landlord, 9/14/08," or "Ask Amy Agent to bind new Professional Liability Policy with Travelers on 11/02/09." Using a metal clasp instead of staples will enable you to avoid the need to constantly remove staples and re-staple pages as you add documents to the file.

Create new folders for each policy each time you begin a new policy year. Otherwise, the files will become so voluminous that they will be of little use.

As an alternative to individual policy files, you may choose to create a three-ring notebook for each policy or, if you have a small insurance program, keep all policies in one notebook. For each policy, create some sections or dividers. The first section should contain the original policy with a divider for any endorsements issued after the policy. Next have a section for any correspondence relevant to that policy, such as your requests for changes, responses from the insurance professional or company, cancellation or nonrenewal notices, and change notices of policy terms and/or premium. If the policy is *auditable*, establish a section for the audit information and file the final audit with the other policy endorsements. You may want to establish a separate section for any insurance *binders* issued by the professional or company.

Insurance Program Notebook

In addition to individual policy folders, it is well worth the time and effort to assemble an insurance program notebook containing critical information about your program. Assembled in a small three-ring binder, this book provides a ready-reference for the person responsible for your nonprofit's insurance program. It contains the answers to questions that come up from time to time, such as:

- What policies does the nonprofit currently have in place?
- What are the policy numbers?
- Who are the insurers on those policies?
- What are the expiration dates?
- What are the annual premiums?
- What are the deductibles or retentions?
- Who is the nonprofit's insurance professional?
- What is the claims reporting process for each policy?

Prepare a summary sheet containing a brief overview of the coverages in place. The summary, sometimes called a schedule of insurance, might read as the one shown on the following page.

The insurance program notebook is the type of reference guide that the person responsible for the program can bring to risk management committee meetings or board meetings. It contains answers to frequently asked questions about the nonprofit's insurance program.

Record Keeping Do's and Don'ts

The first rule is never write or make notations on your insurance policies. Any writing could have an effect on a coverage dispute. If you want to use the policy as a form of record keeping, make a separate location schedule and vehicle schedule, removing and adding items as needed. This can then be used as part of renewal documentation. Keep your policies where they are accessible, since you will refer to them frequently. You may want to make copies for key people within your organization. Also consider including the insurance program summary (schedule of insurance) in the board manual.

SAMPLE

Schedule of Insurance

Not-for-Profit Organization Liability Insurance Policy

Policy Number:	CND 000-00-000
Carrier:	The ABC Insurance Company
Limit of Liability:	$5M
Retention:	$500, each claim
Policy Period:	May 2, 2008– May 2, 2009
Policy Trigger:	Claims Made
Defense Expenses:	In addition to limit of liability
Premium:	$5,200

Commercial Property/ Commercial General Liability

Policy Number:	PIN CP 000000000
Carrier:	The XYZ Insurance Company
Limit of Liability:	$1 Million
Retention:	$500
Policy Period:	July 1, 2009– July 1, 2010
Premium:	Property—$566 Liability—$617
Premium:	$8,7521.30

Umbrella Liability Policy

Policy Number:	ABC 358901
Carrier:	DEF Insurance Company
Limit of Liability:	$50M, per participant, each occurrence
Policy Period:	July 1, 2009– July 1, 2010
Premium:	$250.00
Trigger:	Occurrence

Commercial Crime Policy

Certificate No.:	2-3-149
Master Policy Holder:	The ABC Association
Master Policy No.:	CCP 0028436
Carrier:	The XYZ Insurance Company
Limit of Liability:	$500,000
Retention:	$2,500
Policy Period:	March 16, 2008– March 16, 2009
Premium:	$750

Hired and Non-Owned Auto Insurance

Insured:	The ABC Association
Insurer:	The XYZ Insurance Company
Certificate Holder:	[Name of Nonprofit]
Limit of Liability:	$1 M
Policy Period:	January 1, 2009– January 1, 2010
Premium:	$250

Workers' Compensation Insurance

Policy No.	C 0000-000-00
Group #	090
Carrier:	ABC Insurance Company
Limit of Liability:	$500,000
Retention:	$2,500
Policy Period:	April 21, 2009– April 21, 2010
Premium:	$3,473.34

Policy Archiving

How long should you keep your noncurrent insurance policies? There is no easy answer, and the Nonprofit Risk Management Center suggests you discuss this with legal counsel. The primary purpose of insurance policy archiving is to identify the insurance coverage in effect for any new or pending claims. A claimant may be able to file a loss notice months or years after the incident occurred and the policy expired. Each state has established statutes of limitation, which are time limits during which a lawsuit must be filed. The time limits vary depending upon the alleged actions they cover. Examples are statutes on personal injury, malpractice, property damage, breach of contract, defamation, and wrongful termination. The time limits for civil litigation range from one to seven years. Additionally, the statute of limitations may involve special rules. One exception is the treatment of minors (children under the age of 18). A child has the opportunity to bring a lawsuit within the allowed limitation after reaching the age of 18. In most states that right exists even if a lawsuit was filed on the child's behalf at an earlier time. Therefore, you need to be able to identify the appropriate insurer when a claim is reported years after the incident and after the policy expired.

Where a policy is written on a "claims-made" basis, the policy in force at the time a claim is made will pay for losses, regardless of when they occurred in the past, if there is no retroactive inception date restriction.

With an "occurrence" based policy, the policy in force at the time that the injury, damage or wrongful act occurred will respond even though the policy may have expired.

Another reason to retain your expired or cancelled insurance policies is the possible re-opening of a closed claim. As mentioned above, a child can bring a lawsuit after reaching the age of majority plus the applicable statute of limitation. The initial injury may cause additional physical or medical problems that were not evidenced or envisioned when the accident first occurred. Also there may be a latent injury, such as an exposure to hazardous materials, that does not manifest itself until many years later. These situations involve long-tail exposures, which is when the claim is filed long after the insurance policy(ies) expires. With long-tail exposures the loss may not be recognized for many years, such as claims related to asbestos, medical malpractice, adoptions, products, construction (defective materials or poor design), sexual abuse or molestation, pollution, and other areas that no one has thought of yet.

Insurance Records Rules of Thumb

- Do not write on your policies.
- Keep policies accessible.
- Distribute copies as needed.
- Prepare a summary for the board.
- Ask your insurance professional for help.

You should keep any liability policies indefinitely (permanently). Your nonprofit may not receive notice of a claim for many years after the incident. This is especially true if your nonprofit works with children, provides health care, or participates in other long-tail type of activities. Liability policies include general liability, products and completed operations, automobile, professional liability, directors' and officers' liability, employment practices, liquor liability, employers liability, umbrella or excess liability, equipment breakdown (boiler and machinery), and any other policy with the word liability in its title. For these and workers' compensation policies, retain the original policy with any endorsements, claims notices and information, and pertinent correspondence permanently.

For other types of insurance policies, retain them, along with any relevant notices and correspondence, for at least seven (7) years. These policies include liability policies and commercial property policies covering buildings, office contents, stock or inventory, personal property of others, business interruption (income), and extra expense. Other policies, such as inland marine insurance covering property that may move from various locations, should also be kept for seven (7) years. Types of inland marine coverage include electronic equipment (computers), cameras, fine arts, contractors' equipment, accounts receivable, valuable papers, transportation and transit coverages, medical equipment, and miscellaneous property.

If your organization has recently merged with or acquired another nonprofit, you need to retain the insurance policies for all of the various entities and organizations.

A claim involving a nonprofit that you merged with can come back against the newly formed entity. Therefore, an important part of the due diligence process is to review the current and past insurance program of any potential merger or acquired partners. Retain their insurance records in the same manner as yours. Depending upon the type of acquisition or merger, you may also have assumed responsibility for ongoing claims. Any claims files should be retained in the event subsequent questions arise.

Always keep your current policies readily accessible. You will refer to them often and need to have them within easy reach. You may want to keep last year's policies nearby since you may have to refer to them for any outstanding or new claims reported. You will also need to compare the new or renewal policies to the expiring ones.

Many states and courts now permit the electronic retention of paper records. Commonly, the courts require the documents to be stored in a read-only electronic format. Check with your legal counsel to determine if electronic retention is acceptable and its applicable rules. If your organization has the appropriate equipment, it can scan and store the documents itself. Outside vendors are available to create the electronic records for you. However, as with any storage and filing system you must be able to readily retrieve the information when needed. Also, make sure you have a backup copy of the electronic information stored at another location.

Common Liability Policies

- Commercial General Liability (CGL)
- Automobile
- Professional Liability
- Directors' and Officers' Liability (D&O)
- Employment Practices Liability (EPL)
- Liquor Liability
- Employers Liability
- Improper Sexual Conduct
- Umbrella or Excess Liability
- Environmental or Pollution Liability
- Any other policy with liability in its title

Certificates of Insurance

Certificates of insurance are often an offshoot of a contract. Frequently one or all parties to a contract will request a certificate of insurance from the others. Certificates of insurance are both a blessing and a curse. The blessing is that they provide a confirmation of insurance coverages. The curse is the administrative requirement to collect certificates from others or request that certificates be issued on your organization's behalf. Depending upon the nature of your nonprofit, it may have to provide or receive only a few or thousands of certificates. So how is the insurance program manager going to check and file all of the issued and received certificates? Read on.

What Is a Certificate of Insurance?

A certificate of insurance is a document that delineates the types of insurance policies written, policy dates, coverage limits, and the insuring company or companies in force at the time the certificate is issued. A certificate is commonly referred to as proof of insurance. However, most certificates have a disclaimer such as the one on the ACORD Certificate of Liability Insurance (ACORD 25-S 7/97):

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

Consequently, if the certificate is wrong, you as the certificate holder have very limited (if any) recourse against the insurer of the entity represented by the certificate (the insured). This is also an issue if the certificate is issued on your behalf. When the contract requires you to add the other party as an additional insured, you have not met the terms of the contract until the insurance company actually endorses the policy. A certificate showing the party as an additional insured is meaningless unless an endorsement has been issued.

Certificate of Insurance

A document that delineates the types of insurance policies written, policy dates, coverage limits, and the insuring company or companies.

What's an Additional Insured?

An *additional insured* is a person or entity, other than the named insured, that is protected by a particular insurance policy. An *additional insured* endorsement is the contract by which this is accomplished. When a nonprofit requires that a vendor add the nonprofit as an *additional insured*, the vendor has not met the terms of the contract until the vendor's insurance company *endorses* the policy, affording the nonprofit *additional insured* status.

When Do I Request a Certificate?

You want a certificate from another party when you want to confirm that they have insurance. You want them to have insurance so that if they cause a loss, you will have confidence that the other party has a source of funds from which to pay for the loss. Ideally you should request a certificate from any vendor or independent contractor providing services to your organization—be it a plumber, electrician, computer consultant, fund-raising consultant, accountant or insurance agent. For independent contractors, it is especially useful to have certificates showing proof of workers' compensation insurance. Without certificates, workers' compensation auditors may apply independent contractor remuneration to auditable payroll. Usually you will want a certificate whenever your nonprofit signs a contract or memorandum of understanding for an event or activity including collaborations with other nonprofits or for-profit corporations on an event or project. With a collaboration, you want each party to be responsible for its actions and have the insurance needed to protect itself and possibly your organization. If your organization asks for the other party to provide you with additional insured status, request a copy of the actual endorsement. Too often an insurance company attaches the wrong additional insured endorsement and your nonprofit ends up with no coverage.

When Should You Agree to Provide a Certificate?

Often collaboration partners and facility owners will request a certificate of insurance as a condition to working with your organization or allowing you to use their facilities. In these cases, the other party is trying to protect itself from claims arising from your activities by verifying that you have insurance. Most landlords require a certificate of insurance from each of their tenants. However, that does not mean that you should provide a certificate to anyone who asks for it. Some organizations will only provide a certificate if there is a contract or memorandum of understanding. Establish your guidelines for issuing certificates after discussing them with your insurance professional. When in doubt about a request, consult your broker or agent. The requesting party should have some interest it is trying to protect, not just curiosity about the amount of coverage your nonprofit purchases.

What Do I Do With a Certificate?

Once received (whether requested by or received by you), the insurance program manager should review the certificate for accuracy. This employee should have access to the contract, service order, memorandum of understanding or other documentation regarding the transaction or activity that generated the request for a certificate. The manager compares the certificate to contractual insurance requirements as to types of coverage, policy limits, additional insured status, and any other special requests (extended cancellation notice, higher limits, or additional coverages). If possible, confirm that the insurance company issued the appropriate endorsements. A critical part of certificate review is confirming the status of the insurance company. If you are unfamiliar with the name of the company, call your insurance advisor to assure yourself that it is a reputable carrier likely to pay on a legitimate claim if one is presented.

Contracts

Most contracts contain provisions pertaining to insurance. Some contracts stipulate the types and limits of insurance policies required by one or both parties. The agreement may contain a hold harmless clause, indemnification agreement, survival clause, limitation of liability clause or waiver of subrogation. However, be aware that the insurance provisions may be referenced in several places throughout the contract, and all of these provisions can affect your insurance coverage.

After verifying the certificate, file it for future reference. One option is to file the certificate with the documentation that generated the request. You may also want to keep a copy in a master certificate of insurance file for those you request, and for those certificates requested of you, keep a copy in the insurance program files. You should retain the file as active for the life of the contract or agreement (and any relevant indemnification period). If the agreement extends beyond the current insurance policy period, you need to establish a system for requesting or issuing a new certificate when the present one expires. Retain the contract file and applicable certificates based upon your organization's records retention program for contracts and agreements. If a claim is pending from the activity associated with the certificates, the Center suggests you retain the file under the requirements of your insurance policy retention program. Remember you want to be able to retrieve the file and certificates when you need it.

Reviewing the Insurance Provisions in Contracts

Every nonprofit organization enters into numerous contracts, memorandums of understanding, and other legal arrangements. Examples include a lease for office space, lease-purchase agreement for office equipment, contract for professional services, marketing agreements, purchase orders, and partnership agreements. For simplicity, we refer to these legal documents as either contracts or agreements throughout this section. Most contracts contain provisions pertaining to insurance. Some contracts stipulate the types and limits of insurance policies required by one or both parties. The agreement may contain a hold harmless clause, indemnification agreement, survival clause, limitation of liability clause or waiver of subrogation. However, be aware that the insurance provisions may be referenced in several places throughout the contract, and all of these provisions can affect your insurance coverage. Therefore the insurance program manager should be a part of the contract review and approval procedures within a nonprofit. The insurance program manager needs to, first, review all contracts prior to signing; and second, review the entire contract to ensure that the organization's insurance program meets the agreement's insurance requirements. You can also ask your outside

Named Insured Versus Additional Insured: What's the Difference?

The named insured must report claims and incidents.

The named insured's officers and employees are insureds.

Premiums must be paid by the named insured.

The named insured may request changes to or cancel the policy.

The insurer is required to give notice of cancellation to the named insured.

Some exclusions apply to the named insured only.

insurance advisor to review the contract for you to ensure that your insurance program meets the contract's provisions.

Some contracts stipulate that the nonprofit maintain certain insurance policies in force during the term of the agreement. This provision may also require that one party name the other party as an additional insured to one or more policies. Your nonprofit creates problems for itself if the insurance program does not meet the contractual requirements. First you have breached the terms of the contract. Second, the organization has placed its assets at risk. For example, if the contract requires a general liability policy with a $2,000,000 ($2 million) limit and your policy is only for $1,000,000 ($1 million), you have violated the terms of the contract. In addition, if there is a loss in excess of the $1 million in coverage, your organization is responsible for any losses up to the stipulated contractual limit (even though you do not have insurance to cover it). Few nonprofits have the resources to cover such an uninsured loss.

Almost every contract includes some form of an indemnification agreement—when one party (the indemnitor) assumes the liability of another (the indemnitee, the person seeking indemnity) in the event of a claim or loss. The most common form of indemnification is a hold harmless agreement where one party agrees to hold the other party harmless (and usually indemnify) from the liabilities associated with the hazards of a particular activity or venture.

When evaluating the exposure created by an indemnification agreement, assess the purpose and effect of the agreement. Remember that the agreement is independent of insurance coverage as explained above. The indemnitor's responsibility to pay is dictated by the terms of the contract—not whether or not the party has insurance. If the party agreeing to indemnify you (the indemnitor) does not have the financial resources to meet its obligation, you (the indemnitee) are still responsible for compensating the victim. Therefore, an indemnification agreement is only as good as the financial resources of the indemnitor. So if your nonprofit agrees to indemnify or hold another party harmless, it needs to have the financial resources to meet this commitment. Insurance is the most common funding tool.

Additionally, if the other party is holding your organization harmless, you need to make sure that it has the financial resources (including insurance) available to meet its obligation. If the other party cannot meet its financial obligations, the responsibility will fall to your organization. Two additional contractual provisions that may affect indemnification are a survival clause (indicating whether the indemnification may survive the termination of the underlying agreement), and a limitation of liability clause that effectively reduces a party's liability to a set amount (for example, the contract price) in the event a loss occurs. This is why it is so important for the insurance program manager to review all contracts and agreements prior to signing. Read about this in greater detail in Chapter 6, Liability Insurance.

Suggested Follow-Up

Contact your agent or broker and ask if your general liability, automobile liability and/or package policy insurer provides a standard form or forms on which incidents or accidents should be reported. If so, bookmark the form on your browser or make hard copies for your insurance files. A hard copy of the form for your automobile coverage should be kept in the glove box of each vehicle owned by the nonprofit.

Another component of the reporting process is informing personnel whom to notify in the event of an accident. For a severe accident such as a serious bodily injury, a death or a large property loss, provisions should be made for immediate notification to the organization and insurance manager. Report less severe incidents as soon as practicable. Once the organization receives the notice, it must submit the information to the insurance company.

At some time in a nonprofit's history, the organization will face an accident, incident, lawsuit or other event that occurs despite a range of precautions intended to prevent or avoid the event. There is no risk management program that can foresee or prevent all claims, and no safety method—other than curtailing service delivery altogether—that is guaranteed to prevent accidents. However, what an organization does in the minutes, hours and days following an accident or claim can limit the amount of the loss or damage, minimize negative publicity and prevent a lawsuit. In addition, the actions a nonprofit takes following an incident or claim can affect the coverage the organization receives under its insurance program.

Once the insurance program is in place, the insurance program manager has the important responsibility of managing any loss and resulting claims that occur. Although many nonprofits will never file an insurance claim, the organization needs to know what to do if an accident or incident occurs. Also, an organization can learn as much from a near miss as a real claim. So it is crucial to ensure that the insurance program manager receives notification of any accidents or incidents. This involves establishing procedures for reporting the various types of losses first to the organization and the insurance program manager and then to the insurance professional or company. Once notified, the insurance program manager can convey the information to the appropriate parties and monitor the insurer's handling of the claim to ensure the prompt and proper response, as well as appropriate payment of losses.

Another aspect of claims management is recordkeeping of both specific claims and the overall loss history. Insurance companies and intermediaries often provide premium and loss information to each insured or client. These reports provide valuable information for analyzing your loss experience and managing your insurance program.

The following are some suggestions for establishing a claims management system.

Accident Preparation and Response Tutorial

This free online tutorial will help you to prepare your staff for a variety of workplace-related accidents and to respond to them appropriately. http://nonprofitrisk.org/tools/accident-response/intro/1.htm

Accident and Incident Reporting

Your nonprofit needs a system for employees, volunteers, service recipients and others to report accidents or incidents to the organization. Many nonprofits receive from their insurance company or create for themselves an accident/incident report form that is distributed to the various departments and personnel with clear guidance on the types of incident covered and timing required. Prompt notice is important because it allows the insurance manager (and insurer) to take necessary steps to minimize the total cost of the claim. The insurance manager, not employees unfamiliar with the nonprofit's insurance program, should determine whether and how to report claims.

Insurance Company Notification

Discuss with your insurance professional how to handle claims notification. Remember that every insurance policy requires timely loss reporting to the insurance company, and many claims-made policies require that the claim be filed during the policy term. Property losses should always be reported to your carrier(s) immediately. Damaged property should be kept for insurance company inspection, and no repairs should be made prior to insurance company inspection unless permission is received, or unless repairs are necessary on an emergency basis to prevent further damage. Liability claims reporting requirements can be found under the Conditions Section of the policy. For example, one CGL policy states:

Duties in the event of Occurrence, Offense, Claim, or Suit. (A) you must see to it that we are notified as soon as practicable of an occurrence or an offense which may result in a claim.

Some insurance companies want to be informed of every incident, even if the injured party never files a claim (for example, when a terminated employee threatens to sue as she is escorted out of the office). Other companies only want notification if a claim is or will be filed. So work with your insurance professional to determine when and how you will report incidents. From time to time insurers are successful in declining claims due to the failure by an insured to report promptly.

...the claims adjuster may send a reservation of rights letter that can scare an unsuspecting insurance program manager. A reservation of rights letter states that the insurance company is investigating the claim but reserving its rights to deny coverage at a later date. Without the letter, the insurance company could not investigate the claim while retaining its right to deny coverage later.

Review each policy to determine your responsibilities in the event of a loss. Many property and crime policies require that you notify the legal authorities for theft type claims. Most directors' and officers' policies contain specific instructions for submitting a claim including how and when the notice must be filed and to whom. Often you will have to report an accident to more than one insurer. A large liability loss may require you to notify the primary insurance company and the company writing the umbrella or excess policy. Generally, the latter notification will be your agent or broker's responsibility. For example, after you report the claim to your agent or broker, that person should determine which insurance carriers it should be reported to, which is not always an easy determination. For an auto accident involving an employee, you will notify your broker and he or she will in turn notify the carriers for workers' compensation, auto, general liability and perhaps your umbrella policy. Create a chart that summarizes the claims reporting requirements by policy for your quick review and as a resource for other managers within the organization. File the chart in the notebook discussed under the record-keeping section on page 51.

Remember that failure to meet the terms and conditions of the policy for claims reporting can have serious consequences for coverage. You cannot do anything that will impair materially the insurance company's ability to respond to and settle the claim, including late notification. The insurance company may be able to deny coverage if your actions or inaction impaired their rights.

Claims Monitoring

After you report the loss to the insurance company, establish a claim file. Retain all information and documentation pertaining to the incident in that file. Document all of your conversations with the various parties (insurance agent, company, claimant or other interested parties). Keep tabs on how the insurance company is handling the claim. A quick resolution works to everyone's benefit—the injured party is compensated for his or her loss, the organization can focus its attention on its programs and achieving its mission, and the insurance company minimizes its expenses.

Sometimes a portion of the claims-monitoring task is to negotiate with the insurance companies regarding coverages. An insurance company may deny a claim inappropriately or pay a loss that is not covered. For claims handling, an insurance company wants to keep its options open. Therefore, the claims adjuster may send a *reservation of rights letter* that can scare an unsuspecting insurance program manager. A reservation of rights letter states that the insurance company is investigating the claim but reserving its rights to deny coverage at a later date. Without the letter, the insurance company could not investigate the claim while retaining its right to deny coverage later. The carrier would either have to deny all claims or investigate and face the possibly of payment even without coverage. The legal theory behind reservation of rights is *estoppel*. The company could be estopped from denying the claim after an initial investigation since it appeared to the insured that the loss was covered. Do not panic if you get a reservation of rights letter; it is part of a normal claims-handling procedure. However, you need to be vigilant and prepared to argue with your insurance companies to ensure that they pay covered claims. This is one more reason why it is so important to understand your coverage before you need it.

Keep accurate records of your nonprofit's claims. The documentation should include telephone calls, correspondence, reports and any payments to the claimant or loss adjustment expenses. For each claim, the insurance company establishes an initial loss reserve (how much they think the claim will cost). As the company develops more information about the loss, they will adjust their initial reserve to reflect the projected cost. Reserve changes can be minor or extreme depending upon the information developed during the investigation process. Severity of the injuries or damage and the potential culpability of your organization affect the amount of the reserve. The insurance program manager needs to know the amount paid and reserved for a claim. A severe loss may exceed the organization's insurance limits and require its contribution. Another factor is the possibility that the insurance program does not cover the loss. All of these situations are important financial considerations that the insurance program manager needs to monitor. Note: in some cases an insurance company may not divulge the amount reserved for a claim.

Larger organizations may have more sophisticated claims handling programs or a claims section within its risk management department. Agencies with a substantial workers' compensation exposure may have a return-to-work program, offer alternate light duty, or other methods for monitoring and controlling its workers' compensation losses. However, even the smallest nonprofit should monitor the activity of any pending claim and keep records of its loss history.

Loss Experience Reports

Every insurance company has a system for recording the premium and losses for every policy it writes. Most companies organize this information by account (when you have more than one policy with the same company) and maintain it on a three- to five-year basis. For larger accounts, many insurance companies have special loss experience reports that provide detailed information on claims. The carriers provide these reports to the insured on a regular basis as a part of their risk management and loss control services. Also, some insurance intermediaries have loss history information systems that enable them to provide claims and other risk management information to their clients. Ask your insurance professional and companies about the reports that are available to you. At a minimum, you should request from the insurance company a copy of your account history annually. Most companies produce these reports as a part of the renewal process, so it is advisable to make the request at least 90 days before policy expiration. Other reports may be produced on a quarterly or monthly basis, check with your insurance professional.

The reports enable you to compare your records to the insurance company's information. The report reflects the premium (total estimated and the earned premium) and losses. Insurers record the premium and losses usually by policy and line of business with a general indicator for type of loss (bodily injury, property damage, fire, wind, etc.). The report will show the

The Duty to Report

Insurance policies contain an important section that obligates the policyholder to report claims in a timely fashion. Every nonprofit should work with its insurance professional (agent, broker or consultant) to determine the process for claims reporting. You need to understand what constitutes a reportable incident under your policies and follow the insurer's instructions to the letter. Failing to do so could jeopardize your insurance coverage.

Source: *Ready in Defense: A Liability, Litigation and Legal Guide for Nonprofits*, Chapter 9, page 88, published by the Nonprofit Risk Management Center, Washington, DC.

loss reserve, actual payments and legal expenses. Each report reflects the premium and loss information as of the report-run date. Therefore, insurance companies' loss history reports are an excellent tool for analyzing your loss experience and identifying any trends. Ask your insurance professional to teach you how to read your loss experience reports because each carrier structures its reports differently.

A review of the loss history may reveal that most of your auto losses occur when drivers are backing up. With this information, you can take steps to reduce the likelihood of losses. For example, you might consider installing alarms that sound when your vehicles are put in reverse gear, attaching bigger side mirrors, or offering a driver training course. The loss history may show that back strains are the most frequent workers' compensation injury. In this case, you can provide training in proper lifting techniques, supply assistive devices (hand trucks, back belts), or review what, how and where things are being lifted, then modify the work area to minimize the need to lift. You might discover that most of your losses are coming from one program, activity or location. Armed with this information, you can modify the risk management techniques to address the causes of loss for your nonprofit. You can also use these loss-history reports when negotiating your insurance renewals or bidding the account.

WHEN YOU ARE SUED

When a nonprofit is served with papers indicating it is a defendant in a lawsuit, the following steps should be taken:

- *Make a note of how and when you were served with a summons and/or a complaint.*
  A summons must usually be answered in 30 days or less depending on where it is received and by whom. Do not dodge service; it accomplishes nothing and can create difficulties between the parties.

- *Notify your insurance broker/agent immediately.*
  Send a complete copy of the lawsuit to your insurance broker/agent, and call to let him or her know it is on its way. No matter how upset you are that a lawsuit was filed, ignoring it will not make it go away. Ignoring it can jeopardize your insurance coverage and even make you lose the case by default. It is absolutely critical that the response be handled correctly.

- *Do not alter your records.*
  Look at your incident report to see what happened, but do not make any changes, additions, or deletions to any documents. Do not dispose of any documents you think may be harmful. Chances are someone knows that piece of paper exists and has a copy. You will only look foolish to the other side and dishonest to the court, and could violate federal and state document retention laws resulting in criminal penalties.

- *Do not talk about the case except with your insurer or the defense attorney hired to represent you and/or your organization.*
  Never ever call the plaintiffs or plaintiffs' counsel to discuss the case. Whatever happened to cause the lawsuit will not be resolved by you at this point. Beware of discussing the lawsuit with co-workers. It is not unheard of for a disgruntled employee to give information about a lawsuit to the other side. This could be detrimental to your case. Furthermore, you can jeopardize your legal privileges by talking with those who do not have a legitimate reason to know about the details of the suit or your analysis of your position.

- *Cooperate in obtaining all of the documents, records, or other information when requested by your lawyer.*
  Speedy cooperation is essential. Be sure the originals are in a safe place and send the records exactly as they have been maintained.

- *Do not overstate or understate the facts when you talk to your insurer or your defense attorney.*
  It is likely that your insurer and your defense attorney will require an in-depth discussion concerning the accident or incident. It does no good to shade the facts one way or the other. In the end, the truth will come out. The one thing all defense attorneys hate is surprise. Armed with the truth, your attorney can better build a defense and possibly reduce the impact of even the worst of facts. Do not make an assumption about the importance of any fact; leave that up to your lawyer who has a different perspective and understanding of the law. The worst possible case is for an attorney to be surprised on the eve of trial with a fact that changes the entire complexion of the lawsuit.

- *Do not let politics or emotions prevail over good sense.*
  Your first reaction may be to want to disclose the real facts to the public to absolve your agency of wrongdoing. Do not do it. When an organization does this, it can be very damaging and make it harder for your attorney to help you or to properly handle the claim.

- *Resolve to do this right.*
  A lawsuit is likely to be a part of your life for a while. Resolve to take it seriously, but do not let it consume the life of your nonprofit. Sometimes the steps in the lawsuit process will seem cumbersome, repetitive, and unnecessary. Despite the hassle, provide accurate, thorough information to the insurance adjuster and your attorney. In the long run, this type of cooperation can make or break your ability to survive a lawsuit. You can survive a lawsuit. How? Keep your cool. Take advantage of available expert help. Respect deadlines. Stay organized. Do not let the process consume your life. Most important, remember that the mission of your nonprofit—not the lawsuit—is what truly matters.

For tips on crisis communications see the article, "*Communicating With Key Constituencies During a Lawsuit*," excerpted from *The Best Defense: 10 Steps to Surviving a Lawsuit.*

Visit http://nonprofitrisk.org/library/articles/legal09001998.shtml