Standards for excellence

AN ETHICS AND ACCOUNTABILITY CODE FOR THE NONPROFIT SECTOR

Risk Management and Insurance

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PREAMBLE

America's nonprofit sector serves the public interest and plays an essential role in our society and economy. Hard at work strengthening communities across the nation, nonprofits enrich our lives in a variety of ways by creating a broad array of benefits to society in fields such as charitable, religious, scientific, economic, health, cultural, civil rights, environment, and education.

Public investment and confidence drive the success of nonprofit organizations. Individuals, corporations, foundations, and federal, state, and local governments add value to the services that nonprofits provide by investing time, resources, and funds.

The Standards for Excellence Institute aims to raise the level of accountability, transparency, and effectiveness of all nonprofit organizations to foster excellence and inspire trust. The Standards for Excellence code (Standards, or code) provides a framework and step-by-step guidelines to achieve a well-managed and responsibly governed organization.

The code builds upon the legal foundations of nonprofit management, governance, and operations to embrace fundamental values such as honesty, integrity, fairness, respect, trust, compassion, responsibility, and transparency. The code consists of six Guiding Principles in 27 topic areas with specific performance benchmarks that characterize effective, ethical, and accountable organizations. The Institute helps the nonprofit sector operate in accordance with the Standards for Excellence code by providing educational resources, assistance, and a voluntary accreditation process.

The Standards for Excellence Institute encourages all nonprofit organizations to adopt the Guiding Principles of the Standards for Excellence code. By implementing the performance benchmarks in the code, nonprofit organizations will meet the highest ethical standards for effective service in the public interest.

STANDARDS FOR EXCELLENCE - GUIDING PRINCIPLES

I. MISSION, STRATEGY and EVALUATION

Guiding Principle: Nonprofits are founded for the public good and operate to accomplish a stated purpose through specific program activities. A nonprofit should have a well-defined mission, and its programs should effectively and efficiently work toward achieving that mission. Nonprofits have an obligation to ensure program effectiveness and to devote the resources of the organization to achieving its stated purpose.

II. LEADERSHIP: BOARD, STAFF, and VOLUNTEERS

Guiding Principle: Nonprofits depend upon effective leadership to successfully enact their missions and programs. Effective leadership consists of a partnership between the board and management, each of which plays an essential role. Understanding and negotiating these shared and complex elements of leadership is essential to the organization's success. A nonprofit's employees and volunteers are fundamental to its ability to achieve its mission.

Board members are in a position of trust to ensure that resources are used to carry out the mission of the organization. An organization's board leadership should consist of volunteers who are committed to the mission and who demonstrate an understanding of the community served. An effective nonprofit board should determine the mission of the organization, establish management policies and procedures, assure that adequate human and financial resources are available, and actively monitor the organization's allocation of resources to effectively and efficiently fulfill its mission.

Nonprofits should also have executive leadership which carries out the day-to-day operations of the organization, ensures financial and organizational sustainability, and provides adequate information to the board of directors. An organization's human resource policies should address both paid employees and volunteers and should be fair, establish clear expectations, and provide meaningful and effective performance evaluation.

III. LEGAL COMPLIANCE and ETHICS

Guiding Principle: Nonprofits enjoy the public's trust, and therefore must comply with a diverse array of legal and regulatory requirements. Organizations should conduct periodic reviews to address regulatory and fiduciary concerns. One of a leadership's fundamental responsibilities is to ensure that the organization governs and operates in an ethical and legal manner. Fostering exemplary conduct is one of the most effective means of developing internal and external trust as well as preventing misconduct. Moreover, to honor the trust that the public has given them, nonprofits have an obligation to go beyond legal requirements and embrace the highest ethical practices. Nonprofit board, staff, and volunteers must act in the best interest of the organization, rather than in furtherance of personal interests or the interests of third parties. A nonprofit should have policies in place, and should routinely and systematically implement those policies, to prevent actual, potential, or perceived conflicts of interest. Ethics and compliance reinforce each other.

IV. FINANCE AND OPERATIONS
Guiding Principle: Nonprofits should have sound financial and operational systems in place and should ensure that accurate records are kept. The organization's financial and nonfinancial resources must be used in furtherance of tax-exempt purposes. Organizations should conduct periodic reviews to address accuracy and transparency of financial and operational reporting, and safeguards to protect the integrity of the reporting systems.

V. RESOURCE DEVELOPMENT
Guiding Principle: The responsibility for resource development is shared by the board and staff. Nonprofit organizations depend on an array of sources of financial support. An organization's resource development program should be maintained on a foundation of truthfulness and responsible stewardship. Its resource development policies should be consistent with its mission, compatible with its organizational capacity, and respectful of the interests of donors, prospective donors, and others providing resources to the organization.

VI. PUBLIC AWARENESS, ENGAGEMENT, and ADVOCACY
Guiding Principle: Nonprofits should represent the interests of the people they serve through public education and public policy advocacy, as well as by encouraging board members, staff, volunteers, and stakeholders to participate in the public affairs of the community. When appropriate to advance the organization’s mission, nonprofits should engage in promoting public participation in community affairs and elections. As such, they should communicate in an effective manner to educate, inform, and engage the public.

ABOUT THE STANDARDS FOR EXCELLENCE INSTITUTE

The Standards for Excellence Institute is a national initiative established to promote the highest standards of ethics and accountability in nonprofit governance, management, and operations, and to facilitate adherence to those standards by all nonprofit organizations. The Institute uses as a vehicle the Standards for Excellence program, a system of nonprofit sector industry self-regulation originated by the Maryland Association of Nonprofit Organizations and currently replicated by licensed partners in Alabama, Delaware, the District of Columbia, Eastern Tennessee, Ohio, Oklahoma, Memphis, Pennsylvania, and Virginia. The program is also being offered to chapters of The Arc nationwide through The Arc of the United States, to the American Nurses Association, to the Sacred Sector program of the Center for Public Justice, to Catholic nonprofit organizations nationwide through the National Leadership Roundtable on Church Management, and through the Markkula Center for Applied Ethics at the Santa Clara University.

The centerpiece of the Institute’s program is the Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector. The Institute also makes available to member organizations a comprehensive system of educational tools to enable individual nonprofit organizations to improve their governance and management practices. Standards for Excellence accreditation is available to individual organizations through a rigorous peer review process in selected locations and nationwide through the Standards for Excellence Institute.

For more information about joining the Standards for Excellence Institute or to obtain additional copies of the booklet or educational resource packets visit our website at www.standardsforexcellence.org.

RISK MANAGEMENT AND INSURANCE

As the *Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector* states:

Organizations should make every effort to manage risk and periodically assess the need for insurance coverage in light of the organization's activities and its financial capacity. A decision to forego general liability insurance coverage or Directors and Officers liability insurance coverage should be made only by the board of directors. The decision should be reflected in the minutes for the meeting at which the decision was made.

Risk management is the practice of continual identification of and response to analysis of current and potential risks. The first step in risk management is to identify risk. The next step in the process is to prioritize the analyzed risks (which ones to address first), then to select and implement the appropriate risk management techniques to address these exposures. Finally, the organization monitors the results of the implemented techniques and modifies as needed. This process is circular in that new risks arise frequently, sometimes from changes within the organization and its operations.[1]

According to the International Organization for Standardization (ISO), risk is the "effect of uncertainty on objectives." ISO defines *effect* as a positive or negative deviation from what's expected. *Uncertainty* is a lack of information that leads to inadequate or incomplete knowledge or understanding. An *objective* is what you want to accomplish. Risk, therefore, is neutral, neither good nor bad; it is just a range of possible outcomes.[2] Some risk is positive; risk accounts not only for what can go wrong, but also what can go right.

Nonprofits need to do all that they reasonably can to protect the health and safety of individuals and groups who may be affected by their organizations. Additionally, a nonprofit must work diligently to protect the organization itself from losses to the nonprofit's operation; this also includes the exposure to the organization's reputation. This educational resource packet addresses the roles of risk management and risk aversion in helping to anticipate risk, as well as the financial aspect of risk and the role of insurance in safeguarding the assets of the organization.

The ISO has a list of Principles of Risk Management that may be helpful for understanding the full scope of what risk is and its place in decision-making processes. The following is a summary of these principles:[3]

- Use risk management to create and protect value
- Risk management should be part of all business processes

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[1] For more information on crisis and disaster planning, please see Standards for Excellence educational resource packet on *Administrative Policies.*
[2] http://en.wikipedia.org/wiki/Risk
3 *ISO Translated Into Plain English*. http://www.praxiom.com/iso-31000.htm

- Risk management should be part of your decision-making
- Risk management should be used to handle uncertainty
- Risk management should be systematic and timely
- Risk management should be based on the best data
- Risk management should be tailored to your environment
- Risk management should consider human factors
- Risk management should be transparent and inclusive
- Risk management should be responsive and iterative
- Risk management should support continual improvement

The decision to obtain Commercial General Liability Insurance and Directors and Officers (D&O) Liability Insurance is a critical step in managing a nonprofit organization's most significant risks. Because the potential financial loss to program participants, board members, staff and the organization is so substantial in the event of a legal (negligence) claim, board members must participate in decisions regarding insurance coverage. Some nonprofit organizations assume that the existence of immunity laws like the Federal Volunteer Protection Act and state liability laws eliminates the liability of individual board members and employees of the nonprofit organization, as well as the liability of the nonprofit organization itself. *This could not be further from the truth.*

Managing Risk

The practice of risk management is important in protecting nonprofits and enabling them to achieve their missions. Since risk is the effect of uncertainty on objectives, nonprofits should carefully evaluate and manage its risks to protect the organization and its stakeholders. Nonprofits should see risk foremost as something to be avoided, mitigated, and shifted. Avoid risks by participating in healthy and proper institutional and individual behavior. Mitigate risks by decreasing the likelihood of infractions that cannot be avoided. Shift risks by purchasing insurance and sharing the risk with partners and the other parties to contracts and joint ventures.

Ted Bilich of Risk Alternatives has developed a risk cycle. This cycle is helpful to nonprofit executives because it puts into perspective the regular and systemic process of identifying, prioritizing, responding, assessing and improving, and then starting again:

In this model, Mr. Bilich suggests that nonprofit and business leaders should:
1-Identify threats and opportunities
2-Prioritize risk (considering likelihood, speed of onset, and magnitude)
3-Respond to the priorities (such as avoiding unacceptable risks, reducing negative impacts of risks that cannot be avoided, shifting risks to other entities)
4-Assess and Improve by evaluating results of decisions and considering how risks can be managed even better in the future.4

Additional risk management techniques that nonprofits should employ in order to shift risks include:

- **Internal Controls.** Internal controls systems are designed to detect and correct all sorts of human error -- errors of commission and omission. In addition to traditional segregation of duties among multiple employees, internal controls comprise the organization's plans to:
    - Safeguard its assets;
    - Check the accuracy and reliability of its accounting data;
    - Promote operational efficiency; and
    - Encourage adherence to prescribed managerial policies.

  See the *Standards for Excellence* educational resource packet on Financial Policies and Internal Controls for further assistance in this area.
- **Adequate Screening and Reference Checks.** Many liability problems can be prevented if staff and volunteers are adequately screened during the selection process. The screening process may need to include criminal background checks for nonprofits serving vulnerable populations, such as people with disabilities and children. Consult with an attorney for more details.
    - **Background Checks.** Completing background checks on potential employees and volunteers is a sound means of reducing the risk of hiring individuals who may be or become liabilities. While background checks should under no circumstance jeopardize non-discrimination practices in hiring, they can serve as a protection in the event that information not disclosed in a background check becomes a liability.
- **Worker Safety Programs.** A safety program works to ensure the highest level of safety and security for employees, volunteers, and program participants. Safety programs often include: designating a safety coordinator, implementing a scheduled program of inspections, emphasizing and offering safety training, and investigating, recording, and analyzing accidents and incidents.

4 Ted Bilich, Risk Alternatives, *Why You Need a Risk Cycle,* 3/10/2016, accessed on 7/6/2018, https://risk-alternatives.com/why-you-need-a-risk-cycle/.

- **Employee Handbooks.** Employee handbooks and personnel policy manuals provide summaries of benefits, work rules, and policies. Employee handbooks typically cover areas such as: workplace practices, workplace expectations, leave benefits, career development, compensation and accounting procedures, building procedures, and codes of ethics. This document serves as a guideline for employees to meet organizational expectations. Request a copy of the *Standards for Excellence Institute's Model Employee Handbook* for assistance in this area.
- **Fleet Safety Programs.** For organizations with a fleet of vehicles, a fleet safety program should be implemented. Such a program may include the following activities: screening drivers, maintaining records on vehicles, documenting training provided to drivers regarding safety concerns, introducing rewards programs based on driver safety records, accident/incident reporting procedures, etc.

> Nonprofits are encouraged to talk with an insurance representative to discuss the types of insurance coverage most suited to their work and organization.
>
> Nonprofits should take care to carefully complete applications for coverage as such applications often become part of the policies. Issues not addressed in insurance applications are often disregarded .for your insurance protection.

Insurance for Nonprofits

Shifting risk through insurance is an important part of any risk management program, but not the only risk management technique. Insurance does not prevent any occurrences, but rather provides a funding mechanism to pay for any insured losses, as the Nonprofit Risk Management Center asserts.[5]

Perhaps two of the most important commercial insurance products nonprofits use to protect themselves against financial loss are (1) Commercial General Liability Insurance and (2) Directors and Officers Insurance (D & O). Insurance policies are generally sold through insurance agents or brokers.

Other types of insurance coverages that nonprofits may need include:

[5] Pamela Rypkema. *Nonprofits' Essential Handbook on Insurance*. Washington, DC: Nonprofit Risk Management Center, 1996.

- Automobile Insurance (Liability and Physical Damage)
- Professional Liability Errors and Omissions
- Umbrella or Excess Liability
- Employment Practices Liability
- Employee Benefits Liability
- Fiduciary Liability
- Workers Compensation and Employer's Liability
- Volunteer Accident Medical Coverage (Excess or Primary)
- Commercial Crime Coverage
- Employee Theft (Fidelity Bond) including ERISA Coverage
- Money and Securities (On Premises and Off Premises)
- Forgery or Alteration
- Computer Fraud
- Funds Transfer Fraud
- Commercial Property Insurance
- Building
- Business Personal Property
- Business Income and Extra Expense
- Environmental Liability Insurance (Remediation)
- Aviation or Watercraft Insurance (Liability and Physical Damage)
- International Package (Property, General Liability, Auto Liability, and Employer's Liability)
- Equipment Breakdown (Boiler and Machinery Insurance)
- Flood and/or Earthquake Insurance
- Inland Marine (Transit, Movable Property, Contractors' Equipment)
- Electronic Data Processing Insurance (Hardware, Software, Media)
- Cyber Property and Liability (Security)
- Event Cancellation Special Events Liability
- Specialty Event Competition Insurance (*e.g.*, Hole in One Insurance for golf event)
- Key Person Insurance
- Business Owners Insurance

> *What is Business Owners Insurance Coverage? Is it relevant for nonprofits given that nonprofits do not have "owners"?*
>
> Business Owners insurance coverage is a commercial policy that combines both business property and commercial liability coverage. Business Owners policies are often an alternative to a package policy for nonprofits that do not require professional liability coverage or other specialty coverages like abuse or molestation coverage that might be needed for a traditional social services organization. For many smaller nonprofits, this type of insurance offers better coverage for greater value by having just one policy to cover two areas of risk. Many think this policy is geared only for for-profit businesses, but that is not the case.

Directors and Officers Liability Insurance

In general, each director and officer must perform his duties "in good faith; with the care that an ordinarily prudent person in a like position would use under similar circumstances; and in a manner the director [or officer] reasonably believes to be in the best interests of the corporation."[6] These three duties are often referred to as duties of care, loyalty and good faith. Under the revised Model Nonprofit Corporation Act, directors and officers who act in accordance with this standard will have immunity from liability. [7] However, even the most conscientious board can be sued for mismanagement and/or breach of one of the three duties. Directors and officers can protect themselves in a variety of ways, including indemnification and insurance. [8]

Directors and Officers insurance (D & O) provides coverage for individual directors and officers and the organization arising from the liability of any actual or alleged "wrongful act." Each D&O policy defines "wrongful act" differently but common wording might be: "Wrongful Act means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted or allegedly committed or attempted, by an Organization or an Insured Person." The payment may be in the form of indemnification payable to either the director or the nonprofit or if not eligible for indemnification, the payment may be made to the individual(s) and organization directly. The policy includes coverage for any losses incurred as a result of the legal action and the cost to defend against the allegations. Very few nonprofit organizations or board members have the financial resources to absorb the cost of defending a lawsuit and paying a settlement. Many nonprofits purchase D & O insurance to finance these defense costs and potential settlements or indemnifications. Every D & O policy is different, so the board should review the policy carefully to determine if the policy contains the desired coverage.

A common mistake is to focus on **who** is covered by an insurance policy rather than on **what** is covered. For instance, the definition of "wrongful act" is critical to understand.

Another type of insurance coverage that the board should consider is protection against intermediate sanctions that may result from certain transactions between an officer or a director and the company. The Internal Revenue Service (IRS) may impose intermediate sanctions in the form of an excise tax on certain persons who receive an economic benefit from a tax-exempt entity, the value of which exceeds the consideration received for providing the benefit.[9] The tax applies to transactions such as sales, loans, leases and other types of payments by an exempt organization to or for the benefit of a disqualified person, payments of excessive compensation, and certain revenue-sharing arrangements with disqualified persons. Many D&O policies designed for nonprofit organizations include a sublimit for this coverage, but this type of coverage is generally not provided as a standard inclusion, nor is it readily available in all circumstances. The amount of the premium for this particular protection must be included in the applicable officer's or director's compensation in determining whether such compensation is reasonable or constitutes an excess benefit.

A third important insurance coverage for nonprofit organizations is Employment Practices Liability (EPL). The majority of nonprofit D & O policies include this coverage which protects against illegal employment actions such as discrimination, wrongful termination, harassment,

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[6] Revised Model Nonprofit Corporation Act §8.30(a); §8.42(a); Charles Tremper and Gwynne Kostin, "No Surprises: Controlling Risks in Volunteer Programs," Nonprofit Risk Management Center, 1993, p. 16.
[7] Revised Model Nonprofit Corporation Act §8.30(d).
[8] Revised Model Nonprofit Corporation Act §§8.51, 8.56 and 8.57.
[9] Internal Revenue Code §4958.

retaliation, and similar actions. Even if the organization does not have employees, many D & O policies include volunteers under the EPL coverage.

Other Types of Insurance

Commercial general liability insurance usually provides coverage for bodily injury, property damage, personal and advertising injury (false arrest, detention or imprisonment, malicious prosecution, libel, slander or disparagement, right of privacy, infringement of copyright, trade dress or slogan in your advertising). It is important to carefully review each policy for what is included. For instance, personal injury may be included in some general liability policies and not in others. Coverage can also vary depending upon the type of services and programs provided by the nonprofit. Read the policy carefully to ensure that the nonprofit's insurance needs are being met.

Typical liability coverage includes:

- Premises and Operations Liability
- Products/Completed Operations
- Contractual liability, subject to policy limitations
- Personal and Advertising Injury
- Medical Payments
- Damages to Premises Rented to You
- Fire Damage Liability
- Limited Worldwide coverage
- Who is Insured - Employees and Volunteers Automatic coverage for 90 days for newly acquired organizations

Immunity for Nonprofits

Federal Law

The Volunteer Protection Act (VPA) of 1997 was developed to "provide certain protections from liability abuses related to volunteers serving nonprofit organizations [501(c)(3)'s] and governmental entities." The Act grants limited immunity rom personal liability for volunteers of nonprofit organizations. However, the immunity protection does not prohibit the filing of a claim against volunteer(s). Anyone can bring a lawsuit against a volunteer despite the VPA. Furthermore, immunity laws, including the VPA, generally do not protect against willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights and safety of the claimants. Volunteers operating motor vehicles are also not covered under the VPA.

In addition, the Act is limited because it only offers immunity to those who volunteer for nonprofits, including board members. The nonprofit organizations and their employees are not covered under this Act. Thus, as suggested by Jerald Jacobs, General Counsel for the American Society of Association Executives, this federal immunity law "increases and enhances . . . risk management, but it does not replace other risk management techniques, such as insurance."[10]

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[10] Jerald A. Jacobs, "How the New Law will Affect Associations." *Association Management*, August 1997.

State Immunity Laws

In many cases, individual states will have immunity laws that provide protection from liability for individuals as part of their state code. This protection often goes above and beyond the protection provided by the Federal Volunteer Protection Act of 1997. These laws may provide coverage to "agents" of an organization; defined as volunteers, directors, officers, or employees of a qualifying organization (charitable nonprofits are one type of qualifying organization). Such agents are generally immune from civil liability for ordinary negligence. For example, Colorado, Delaware, Massachusetts, Minnesota, New York, Ohio, and Rhode Island have laws which provide immunity from liability for ordinary negligence.[11]

It should be noted that some state immunity laws protecting staff, board members, and volunteers may only do so if the organization has insurance coverage. For example, the Kansas statute only provides immunity for a volunteer of a nonprofit organization if the organization carries general liability insurance coverage.[12] In Maryland, California, and the District of Columbia, the insurance coverage must meet certain thresholds.[14] The Nonprofit Risk Management Center has a compilation of the state liability laws, *State Liability Laws for Charitable Organizations and Volunteers* – 4th Edition available on its website, https://www.nonprofitrisk.org/library/state-liability.shtml.

Selected Resources on Risk Management and Insurance

Melanie Herman and Mark E. Chopko, *Exposed: A Legal Guide for Nonprofit Executives*, Nonprofit Risk Management Center, November 2014.

Melanie Lockwood Herman, *Ready or Not: Risk Management Guide for Nonprofit Executives*, Nonprofit Risk Management Center, 2009.

Bruce R. Hopkins, *The Law of Tax-Exempt Organizations, 10th Edition* .John Wiley & Sons, Inc., 2011.

Coverage, Clauses, and Consequences: An Insurance Handbook for Nonprofits, Nonprofit Risk Management Center, 2008.

Marion R. Fremont-Smith, *Governing Nonprofit Organizations.* The Belknap Press of Harvard University Press, 2004.

Attachment:

[11] For specific provisions, see C.R.S. 13-21-116 (2006); 10 Del. C. § 8133 (2006); ALM GL ch. 231, § 85K (2006); Minn. Stat. § 317A.257 (2014); NY CLS N-PCL § 720-a (2009); Ohio Rev. Code Ann. 2305.38 (2006); R.I. Gen. Laws § 7-6-9 (2013). This immunity may not extend to causes of action arising out of an operation of a motor vehicle.

[12] Kan. Stat. Ann. § 60-3601 (2006).

[14] Md. Courts and Judicial Proceedings Code Ann. § 5-406 (2006); Cal. Corp. Code § 5047.5 (2006); D.C. Code § 29-301.113 (2014).

- Attachment A: Questions and Answers about D & O Coverage

Special thanks to Leslie White of Croydon Consulting, Rob Cannon of Gorges and Company, Magdalena Camillo and Howard Jacobson of Akin Gump Strauss Hauer & Feld LLP, and Ted Bilich of Risk Alternatives for their assistance in developing this Standards for Excellence educational resource packet.

Attachment A
Questions and Answers about D & O Coverage

Q: I'VE HEARD THAT CHARITIES ARE IMMUNE FROM LIABILITY IN THE STATE WHERE OUR ORGANIZATION IS INCORPORATED - DOES OUR ORGANIZATION STILL NEED D & O INSURANCE?

A: Charities are often immune from many types of liability under individual state laws. Many states have enacted legislation to protect volunteers, board members, and staff. However, court decisions and statutes provide only limited protection. For several reasons, it still makes sense for your organization to get D & O coverage.

1) Immunity from liability doesn't mean that someone can't sue you and force you to incur expenses defending your organization and its directors, employees, and volunteers. One of the principal reasons for buying D & O coverage is that it will pay for the costs of defense. The costs of defending a D & O suit can be very high and, unless your organization has sizable cash reserves, you may not have the funds to pay an attorney to defend you.

2) While state immunity laws may be good, they may not protect your organization and board members, staff and volunteers from all potential liabilities.

3) State laws that provide immunity for your staff, board members and volunteers may only do so if your organization has insurance coverage. Some state laws specify that your coverage must meet certain thresholds.

The most significant impact of state immunity provisions is that they enable you to get a better deal on the insurance you do buy. In addition, the amount of insurance coverage you have provides limits beyond which your organization, its employees, and volunteers can't be held liable if the liability is capped at the amount of insurance you have in place.

Q: MOST OF OUR BOARD MEMBERS HAVE PERSONAL UMBRELLA POLICIES - ISN'T THAT GOOD ENOUGH?

A: No. It is not fair to ask your board members to utilize their personal insurance policy for the volunteer work they do in your organization. Many board members rightfully feel that they want their personal insurance policy to cover their personal needs.

(1) The extension of coverage for the person's activities while volunteering for a nonprofit organization only applies to the insurance coverages provided by the volunteer's personal liability and umbrella policies. Their personal liability coverage may offer no protection for their liability arising out of allegations of wrongful acts arising from their board service. They expect you to protect them for the volunteer work they do for your organization.

(2) An individual's personal policy provides **no protection** for your organization, its staff, or other board members and volunteers.

Q: MY ORGANIZATION ALREADY HAS GENERAL LIABILITY INSURANCE - ISN'T THAT ENOUGH?

A: No. To put it simply, general liability insurance is very specific and covers losses involving bodily injury and property damage, medical payments and personal and advertising injury. It does not cover the claims arising from actual or alleged wrongful acts committed by the organization, directors, officers, employees and volunteers. D & O policies exclude coverage for bodily injury and property damage. For example, if someone slips and falls in your office and seeks financial restitution from your organization for her injuries, that claim is likely to be covered by your general liability policy. It is not covered under the D & O policy. If the same person files a claim against your officers and directors, alleging they were negligent in managing the organization by allowing a dangerous condition to exist, that claim would not be covered under most general liability policies, but would be covered as a D & O claim. The person is not seeking restitution for her bodily injury but the organization's wrongful act in not maintaining safe premises.

In another example, a staff member sues the organization, its executive director, and all the board members alleging that he was the victim of sexual harassment by the director and that the board was negligent in supervising the director. General liability policies exclude employment practices liability coverage although a few policies do provide a very minimal limit (e.g., $5,000) for EPL losses. In fact, the claim may be covered by your D & O policy only if the policy has Employment Practices Liability coverage.

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