Why NonProfits Need D&O Coverage

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Directors' and Officers' coverage should be included in the insurance portfolio for most businesses. The coverage is sometimes overlooked for nonprofits. The nonprofit sector has undergone increased scrutiny in recent years, in part due to their favored tax status and for some, large benefits and pay packages for executives. The nonprofit exposure is significant, as approximately 20% of United States businesses are nonprofits. Helping nonprofit clients and their board directors and members, trustees, volunteers understand their exposures and their need for D&O coverage is another value-added service of the professional insurance agent.

The type of entity, such as corporation, limited liability company, or trust, and whether or not the organization is a charity, can impact the exposure for directors and officers. D&O coverage is needed when the nonprofit has a board of directors. A board of directors is required when the nonprofit is a corporation. (www.insurancejournal. com).

Although the terms are sometimes used interchangeably, a nonprofit is not necessarily a charity. All charities are nonprofits but not all nonprofits are charities. The IRS currently recognizes 25 classifications of nonprofits, including charities. Nonprofits receive special tax status from the IRS. Nonprofits operate to serve a cause or a specific purpose, either as a public benefit for the community at large (museums, libraries) or a mutual benefit to serve their members, such as a trade association. A charity's purpose is to provide aid and assistance to the public. Examples include churches, educational foundations and public educational institutions.

Society is becoming increasingly more litigious. There is а common misconception that nonprofits, including charities, their employees, officers and volunteers are immune from lawsuits. The federal Volunteer Organization Protection Act of 2017 does exempt certain activities of volunteers and nonprofits from litigation, but not all

of them. According to the Nonprofits Insurance Alliance Group, each year one in 100 nonprofits file claims under their D&O insurance. Typical claims involve employment issues such as discrimination, harassment or wrongful termination. Defense costs can be significant – as much as \$100,000 or more, in addition to average settlements paid for adverse judgments of over \$450,000.

Since directors and officers of are often nonprofits volunteers, they may not be as familiar with the operations and procedures of the nonprofit as they are for their paying job. They may also not have business experience, and therefore may not understand their legal responsibilities and potential liabilities. Reporting and legal requirements are different for nonprofits than for profit entities. Potential damages from a D&O claim could easily exceed the director or volunteer's net worth.

All Directors' and Officers' insurance programs are not alike. An important feature is the definition of who is an insured. This should include paid and volunteer workers, directors and trustees. Limits of liability vary, and there may or may not be a deductible.



Prior acts provides coverage for events that happened before the policy was effective. Full entity coverage protects the organization itself, even if no individuals are named in the suit. D&O coverage offers payment for damages and defense, as well as indemnification of directors and officers that may be required in the nonprofit's by-laws. Defense coverage is often unlimited.

As with all policies, it is important for the agent to review the coverages with their client to ensure that they understand the terms. Having D&O may enable nonprofits to attract and retain qualified talent. Providing a comprehensive insurance plan, including liability coverage for the directors, officers and volunteers is another sign of the true insurance professional.

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