



8 Dangerous Mistakes to Avoid

When Placing Nonprofit Risks

WHITE PAPER

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When Placing Nonprofit Risks

It isn't always easy for nonprofits, religious organizations, and social services to get the insurance coverage they need. There are a number of reasons for this; one is that standard appointed markets are typically not set up to deal with the special risks presented by many nonprofits. There are no one-size-fits-all coverage solutions, and even smaller organizations require specialized expertise.

Despite the need for that expertise, however, many independent insurance agents don't have it. When that's the case, it is easy for certain aspects of coverage to get overlooked—and for the organization to go uninsured as a result. Here are the most common mistakes we see agents, brokers, and organizations making when placing this type of risk—and how to avoid them.

1 *Ignoring the need for cyber liability insurance*

In 2015, hackers exposed nonprofit IRS reports at the National Center for Charitable Statistics.¹ In 2016, cybercriminals forced a hospital to pay a \$17,000 ransom to regain access to its computer network.² Cybersecurity is a serious risk for nonprofits large and small—and their coverage needs to keep up.

This is particularly true for any organization that takes donations through a website, stores and manages sensitive data through an internal software system, or does seasonal fundraising online—as a data breach during a fundraising campaign can wreak havoc for any nonprofit's income. The risks are significant, but cyber liability insurance is not being sold to nonprofit and religious organizations as aggressively as it should be.

2 *Thinking funds transfer fraud is covered under crime policies*

Nonprofits can be particularly vulnerable to funds transfer fraud. This type of fraud can take several different forms; in some cases an outside party hacks into the insured's financial account and illegally transfers money, or accesses an executive's email account and asks an employee to do it.

Banks are usually required to compensate victims of this type of fraud when it involves a personal account, but commercial organizations do not typically have that protection.³ It's a common misconception that crime or cyber liability insurance policies include coverage for this type of fraud. However, funds transfer fraud is usually covered as a separate endorsement on a nonprofit crime policy.

3 *Believing a general liability policy is enough to cover volunteer risk*

Most nonprofits and the people they serve depend heavily on dedicated volunteers. However, volunteer activity presents a host of risks.

General liability policies cover bodily injury and property damage to third parties as well as other damages such as libel, slander, defamation of character, and invasion of privacy. A nonprofit can be found liable for a volunteer's actions when those actions cause harm to a third party. Nonprofits should make sure their general liability policies will protect both the organization and the volunteer in the event of a third party claim.

In addition, nonprofits face significant exposure from injury to volunteers while working on behalf of the nonprofit. Injury to volunteers may be covered under a general liability policy if there is negligence on the part of the nonprofit organization, but coverage relies on proving negligence. Volunteer accident policies, which don't require that proof, will also cover employee injuries—and provide a more complete form of coverage.

Nonprofits can also cover volunteer injury by adding coverage for volunteers to a workers' compensation policy. However, this is a risky move; insuring volunteers this way can have a negative effect on the nonprofit's loss history and experience modifiers. This could, ultimately, drive up premiums. In addition, many workers' compensation carriers do not offer volunteer injury coverage.

Full coverage for volunteers often involves weaving together different policies such as volunteer accident, general liability, non-owned auto, and sexual abuse and molestation liability, among other coverages.

4 *Not considering the need for sexual abuse and molestation liability coverage*

This is particularly important for nonprofits who serve the most vulnerable populations, such as children, the infirm, and the elderly. While these suits are relatively rare, they tend to involve large and high-profile settlements when they do occur.⁴ It is common for the organization to be named in these suits in addition to the employee or volunteer accused of perpetrating the abuse.

General and professional liability policies rarely cover cases of sexual abuse and molestation; it usually has to be purchased separately. These policies can cover the defense of employees or volunteers unless they admit to the abuse or are found guilty; if that's the case, they would be responsible for their own court costs, but the nonprofit would still have coverage for defense and settlement expenses.

5 *Assuming small nonprofits don't need Directors and Officers (D&O) coverage*

This coverage insures the directors, officers, and trustees of nonprofits against suits brought against them for decisions they make on behalf of the nonprofit. These decisions can run

the gamut from regulatory compliance to financial and operational issues, as well as wrongful actions against employees.

Insurance agents often encounter the objection from smaller nonprofits that they don't need D&O coverage due to their size or the fact that they don't have employees.

However, no matter the size of the nonprofit, its board members may be forced to pay significant damages out of their own income and assets if they are judged liable for damages. Nonprofits without D&O liability insurance may find they have trouble attracting directors and officers for this reason.⁵

In addition, employees are not the only people who can sue members of a nonprofit's board. Potential plaintiffs can include funders, vendors, other nonprofits, other board members, donors, members, and the state Attorney General, among others.⁶

However, the majority of D&O claims are related to employment issues. These may include discrimination, wrongful termination, sexual harassment, and failure to accommodate employees with disabilities. As a result, most nonprofit D&O policies now include coverage for Employment Practices Liability, which covers the organization and its board in the event of damages pertaining to wrongful termination, harassment and discrimination.

While most D&O policies cover employment-related issues, every policy is different—and some may only include certain employment practices unless more broad coverage is specified. As most D&O insurance claims are employment-related, this is usually advisable.

6 *Believing special events policies provide adequate coverage for liquor sales*

Many nonprofits hold mixers and fundraising events that involve the serving of alcohol. In some states, "social host" legislation dictates that organizations that serve alcohol are legally responsible for damages if, for example, a guest drinks too much at an event and later gets into a car accident. When that happens, a nonprofit may be forced to pay—even if it has a general liability policy that theoretically includes events.

Most general liability policies provide coverage for “host” liquor liability—meaning if the nonprofit is serving alcoholic beverages for free, coverage applies. However, if alcoholic beverages are being sold rather than served free, the picture becomes more complicated.

Most general liability policies exclude coverage for liability arising from the serving of alcoholic beverages for nonprofits that are “in the business” of selling those beverages. Carriers may deem the nonprofit “in the business” of selling alcohol if tickets are being sold that include an alcoholic drink, or if the event requires a liquor license, for example.

Because of this gray area, nonprofits with only general liability coverage in these situations are often at the mercy of carriers when damages occur, and frequently this decision comes down to how big the claim is. This is why liquor liability insurance is essential for nonprofits that hold events where alcohol is sold, even if the alcohol is provided as part of the cost of a ticket that includes food.

When placing this risk, agents and brokers must be clear on the types of forms the carrier is using—as liquor liability isn’t always automatically included in special events policies. Some carriers use a standard ISO policy form that includes both special event and host liquor liability coverage, while other specialty carriers exclude all liquor liability—so it has to be bought as either supplemental coverage or a standalone policy.

7 *Leaving volunteer-owned vehicles uninsured*

Many nonprofits don’t have the financial resources to maintain their own fleet of vehicles—and thus rely on volunteers and employees to use their own when doing work on the nonprofit’s behalf. Any nonprofits whose employees or volunteers use their own cars on the job need to be sure that non-owned auto coverage is in place. This type of coverage is usually added to a nonprofit’s auto insurance policy, but it can also be added to general liability.

8 *Covering international organizations with domestic general liability insurance*

Some nonprofits are based in the United States but operate in several countries or worldwide. Domestic general liability policies usually cover claims that arise in other countries, but aren't designed for nonprofits that do the vast majority of their work overseas. Many policies require that the suit be brought in the United States.

This can be problematic and expensive for some nonprofits, depending on their situation. In these cases, nonprofits should have an international general liability policy that allows these claims to be tried in the country where the nonprofit is operating.

Even small nonprofits can present outsized and complicated risks. The right insurance is essential to protecting the assets, management, employees, volunteers, and properties of these organizations—not to mention the communities they serve. Insurance agents who avoid these mistakes can be instrumental in helping them continue serving the people who need them most—even in the event of legal and financial challenges.

About Charity First

Charity First is a wholesale brokerage, underwriter, and program manager specializing in hard-to-place risks for religious institutions, nonprofit charities, and social services. We have been connecting retail brokers who serve the nonprofit community with markets and products to meet their clients' unique needs since 1985.

For additional information about Charity First, please contact Riley Binford at riley_binford@charityfirst.com or (800) 352-2761.

Notes

¹ Creedon, Aine. "National Center for Charitable Statistics Hacked: 990s, E-Postcards, and More Accessed." *Nonprofit Quarterly*, February 25, 2015.

² Wagner, Laura. "LA Hospital Pays Hackers Nearly \$17,000 to Restore Computer Network." NPR, February 17, 2016.

³ Ydstie, John. "When Cyberfraud Hits Businesses, Banks May Not Offer Protection." *NPR*, September 15, 2015.

⁴ Herman, Melanie Lockwood. "Abuse Coverage Isn't a Needle in a Haystack, but It Will Cost You." Nonprofit Risk Management Center: <http://www.nonprofitrisk.org/library/articles/insurance03112003.shtml> (accessed February 26, 2016).

⁵ Davis, Kevin. "Why Community Associations Need Proper D&O Coverage." *Insurance Journal*, April 4, 2011.

⁶ "Who Can Sue a Nonprofit Board?" Nonprofit Risk Management Center: <http://www.nonprofitrisk.org/library/articles/insurance0405.shtml> (Accessed February 26, 2016)

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