

SwissGuard: Why non-profit organizations need Directors & Officers (D&O) insurance protection

There is a widely-held belief that directors and officers of non-profit organizations are not vulnerable to legal actions relating to their managerial capacities. In reality, non-profit organizations, their executive officers and board members are susceptible to the same type of lawsuits as private and publicly-traded companies in many ways and face a host of exposures.

Typical Allegations

- The Board not following the organization's Mission Statement or fulfillment of its charitable work
- Misappropriation of funds or mismanagement of assets
- Anti-trust suits involving trade and professional associations.
- Conflicts of interest and self-dealing
- Employment-related suits
- Breach of fiduciary duties.

Litigation stemming from the above allegations can affect the organization's professional reputation and carry a financial burden that could, potentially, impact its ability to continue operating. In fact, an entity's financial viability is often the impetus for lawsuits and can have a notable impact on the members, employees and recipients of services. Further, non-profit organizations are often budget-constrained and generally have limited resources to respond to expensive liability claims. This requires leadership to carefully consider risk transfer solutions and it underscores the need to purchase a D&O policy.

A unique nuance for non-profits is their use of volunteers. Since many non-profits are budget-driven and lack deep financial resources to employ or consult experts, they rely heavily on volunteers. This often increases the likelihood of breaches of duty. Even if there is no merit to claims, the defense costs add up quickly and may negatively impact the financial profile, leaving the entity with significant, unplanned expenses. At a minimum, non-profit organizations need D&O coverage to protect their balance sheet, defend the entity against allegations (meritless or not) and to protect the personal assets of Board.



To offer protection to management in response to the above allegations, and to attract talented business leaders, a typical business practice is to have broad indemnification provisions within an organization's by-laws. Where full indemnification is not available or permitted, the personal assets of the directors and officers are at risk, emphasizing the need to secure D&O insurance.

It's important to highlight that non-profits are exposed to more than just D&O claims. Claims can arise from employment-related matters, civil rights issues and fiduciary liability. For example, when a non-profit organization endures financial difficulty or even amends their business model, this may prompt staff reductions or modifications in benefits which can give rise to employment and fiduciary claims. As outlined below, our SwissGuard product offers protection for those claims as well.

Swiss Re Corporate Solutions Product Offering

SwissGuard for non-profit organizations is a comprehensive policy designed to grant protection for Directors and Officers Liability, Employment Practices Liability and Fiduciary Liability for U.S. domiciled companies. Our policy addresses the above exposures and provides protection to the directors, officers, employees, volunteers and third parties.

SwissGuard is underwritten by North American Specialty Insurance Company a member of Swiss Re Corporate Solutions and benefits from the exceptional financial strength of Swiss Re Group. This translates to dependability and sustainability as evidenced by 150+ years of operating history. We apply our coverage expertise to the risk transfer needs of our clients by delivering quality insurance protection.

Non-Profit Organizations Claim Scenarios

Claims against directors and officers are often complex and are brought by donors, members, creditors, governmental bodies, employees and others. The following claim examples demonstrate why the purchase of directors and officers insurance, including employment practices liability coverage, is so important.

Donor/Misuse of funds

- A State Attorney General sued a large charitable foundation, alleging the trustees were excessively compensated and devoted insufficient time and resources to support the foundation's intended purpose.
- A non-profit university agreed to pay a large sum to settle a lawsuit brought by descendants of a donor who claimed that the university improperly used an endowment established by the donor.
- A non-profit medical foundation was faced various lawsuits emanating from the foundation's bankruptcy, including claims that endowment funds had been improperly used to pay operational expenses

Creditor/Customer/Competitor Suits

- Creditors allege inaccuracies in financial information that they relied upon when they extended credit. They sue companies alleging the board allowed a company's assets to be squandered.
- Customer lawsuits stem from disputes regarding debt collection, the costs or quality of products or services, and refusal to extend credit.
- Competitors often allege anti-trust or unfair competition. Lawsuits by competitors include misrepresentation of a competitor's products, infringement of a competitor's trade dress, and enticing employees to leave a competitor.

Regulatory enforcement

- Like other companies, non-private firms fall under the regulatory oversight of a variety of federal/state agencies. The agencies often initiate investigations of the company to evaluate compliance of laws.
- Claims can come from both state and federal governmental agencies (DOL, FDA, FTC, SEC, etc.). A newer area of scrutiny and enforcement relates to the Department of Justice and the Foreign Corrupt Practices Act and the False Claims Act.

Other Claims, Including Employment Practices Liability:

- Discrimination Suits - Plaintiffs sue companies for acts of discrimination based on Age, disability, gender, race, religion, and other categories that violate laws enforced by the EEOC.
- Wrongful Termination - Employees allege their firing or layoff was illegal and in violation of federal and/or state anti-discrimination laws, employment agreements or labor laws. An example would be a firing in retaliation for the employee having filed a complaint or claim against the employer.
- Sexual Harassment - Claimants allege violations of Title VII of the Civil Rights Act of 1964 and can involve unwelcome sexual advances, inappropriate promises/rewards in exchange for sexual favors and other verbal or physical harassment of a sexual nature.

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