



Nonprofit Insurance Primer

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Insurance Primer for Nonprofit Organizations

There are certain basic components that comprise a comprehensive business insurance program. It is helpful to understand a few basic terms used in the discussion of “business insurance”. **The term “business insurance” is most readily understood by stating what it is not:**

- **Life Insurance**
- **Health Insurance**
- **Disability Insurance**

Often you will hear non-benefit types of insurance referred to as Property/Casualty Insurance. **P&C insurance, i.e. business insurance, consist of:**

- **real and personal property**
- **general liability**
- **professional liability**
- **directors and officers liability (including employment practices liability)**
- **workers compensation**
- **automobile**
- **umbrella**

Taken as a group, these forms of insurance provide a comprehensive approach to the types of risk associated with running a business or a nonprofit organization.

How to Read an Insurance Policy

If you've ever tried to read an insurance policy, then you know that it is no easy task. We've been taught to read left to right and front to back, and so that's the way most people try to read an insurance policy. When you read a policy this way, you're likely to end up confused and frustrated.

There's a better way to read your policy. For almost any type of insurance, you can break the policy up into 4 different sections that should read in a specific order. Those sections are:

- *insuring agreement*
 - *definitions*
 - *exclusions*
 - *conditions*
1. The insuring agreement outlines in a broad sense who and what are the subjects of insurance.
 2. The definitions specifically address the exact meaning of all highlighted or bold words. How a specific term is defined may broaden or restrict coverage.
 3. Exclusions are used primarily to restrict coverage. Most insurance agreement give very broad coverage and then the exclusions take it back.
 4. Conditions can often provide some limited additional coverage. They also spell out the duties of the insured after a loss. If an insured fails to fulfill the required duties, it could cause nullification of coverage

Please Note: Insurance policies are not standardized documents. Each policy can read differently. For our discussion we are using the Nonprofit Multiple Peril Insurance Policy and the Great American Non-Profit Organization Executive Protection Liability Insurance policy.

Directors and Officers Liability Insurance

Also sometimes referred to as Nonprofit Association Professional Liability

This form of insurance provides protection to an organization's officers and directors, and the entity itself, against damages to third parties as a result of the board and/or its members and /or the Entities wrongful actions. For example:

- The Board endorses an insurance program for its members. In return for the endorsement, it is discovered the Board was paid a royalty fee that was used to pay for a golf vacation for the entire board. Donors to the organization find out about the vacation and sue the Board for misappropriations of the organization's funds.
- The Board hires an Executive Director and six months later fires the Executive Director without proper notice. The Executive Director brings suit against the Board for wrongful termination.
- In both of these cases the Directors and Officers, D&O, insurance will respond to cover the cost of defense and any legally enforceable damages.

D&O/ Association Professional Liability tends to be a more technical coverage and is the least standardized of all coverage forms. D&O policies are written with broad insuring agreements and then coverage is restricted in the exclusion section. Read the insuring agreements, then go directly to the exclusions, and then the definitions. This will provide you a reasonably clear understanding of the coverage being provided.

There are some key coverage extensions to look for:

- **Entity Coverage:** Is the Entity included in coverage? Some forms will use the word Entity in the coverage form while others will include the word Entity in the definition of insured. Without entity coverage, coverage will apply to the board only and the organization may have a gap in coverage.
- **Employment Practices Liability:** Coverage should be extended to both the board and the entity. This coverage is normally excluded but can be "bought back" and added by endorsement. Be sure to carefully review how employment practices is being defined. Many insurance companies will significantly reduce coverage by limiting the definition of the terms.

General Liability

This form of insurance covers losses resulting from allegations of property damage and/or bodily injury caused in an accident as a result of the insured's negligence. For example:

- A school decides to have a fundraiser and sell food as part of the program. Several people contract food poisoning and sue the school for damages. General liability insurance covers the cost of defense and pays for the injured parties' damages up to the limits of the policy.
- A school organizes a fundraiser and sends students into people's homes to do odd jobs. While working in someone's home a student accidentally puts a ladder through a window. The general liability insurance will respond to pay for the window to be repaired.

Key terms and conditions:

- *Coverage Agreement...describes the situation in which the policy will respond*
- *Definitions...coverage can and often is restricted by definition of key terms*
- *EXCLUSIONS...very critical, the insurance company giveth and taketh away*

For example: The **Coverage Agreement** states, "The bodily injury must be caused by an **occurrence**".

Occurrence is defined as, "an accident, including accidental continuous or repeated exposure to substantially the same general harmful conditions."

Warning: Insurance policies are written by lawyers and are intended to be read, and interpreted by lawyers.

It is important to keep this in mind. Terms are seldom defined in simple terms and the general policy language tends to obfuscate the underlying intent.

Sexual Abuse or Sexual Molestation Liability

This is a special line of coverage not often provided by standard insurance companies. Reading the insuring agreement is critical in determining coverage. Once the insuring agreement is understood, special attention should be paid to the exclusions and the definitions in order to see if coverage has been restricted, excluded or otherwise compromised. For this particular line of coverage it is also important to closely review the Coverage Conditions section to make sure you fulfill the required duties at the time of loss.

Real and Personal Property

This is first party insurance designed to cover the real and personal property owned by the organization. For example:

- computers
- office furniture
- telephone system
- copiers
- improvements and betterments
- building
- ordinance of law
- extra expense

Key consideration should be given for the valuation of the property, i.e. replacement cost; what it would cost to repair or replace property of like kind and quality. Also, if a fire closed down operations, how long would it take to be back in operation and at what cost.

Key policy terms:

- *Coverage Agreement...states what is covered*
- *covered property...defines what is covered*
- *property not covered...spells out what is not covered*
- *Additional Coverages...additional coverage provided*
- *Extensions of Coverage...small limits of additional coverage*
- *Perils Covered...defines types of losses covered*
- *EXCLUSIONS...read carefully, restricts, excludes, and or limits coverage*
- *Definitions...how a term is defined can have great impact*

Professional Liability

This form of insurance protects the insured from monetary damages when a claimant alleges damages as a result of the insured committing a wrongful act. For example:

- A counselor working with troubled youth in an after school program advises the youth to face his problems with action and the student shoots his father-in-law. The father-in-law's family finds out about the advice given to the student and sues the counselor and the school for \$250,000. The professional liability will respond to cover the defense cost and pay any legally enforceable damages.
- A student is tested upon graduation and it is discovered he is only able to read at a six-grade level. His family brings suit against the school claiming failure to educate. The professional liability policy will respond to cover the cost of defense and any legally enforceable damages.

As you may by now expect, the same key sections of the policy need to be paid attention to:

- Coverage Agreement
- Exclusions
- Definitions
- Conditions

The relationship between professional liability provided in the Nonprofit Multiple Peril Policy and the Nonprofit Association Professional Liability needs to be understood. The professional liability provided in the multiple peril policy is specifically directed at the counseling exposure inherent in many nonprofit organizations. On the other hand, Association Professional Liability is designed to pick up the wrongful acts exposure generated by the nonprofit organization and its Board.

Workers Compensation

This form of insurance is in essence a “no-fault” insurance that covers your employees for medical expenses and loss of wages due to an injury sustained on the job. The legal requirements for an employer having to provide workers compensation varies from state to state. The most common requirement is for employers with three or more employees having to provide workers compensation for employees. However, the business owner may exclude herself from coverage if she chooses to do so.

The cost of workers compensation is based upon a rate approved by the state per 100 of payroll. The rates vary considerably from state to state depending on the classification of the employee, the benefit level, cost of living and other demographic factors.

Some companies offer "dividend" plans. Dividend plans allow the insured the opportunity to participate in underwriting profit that their loss experience generates for the company. Dividends for favorable loss experience helps to reduce the net cost of insurance.

Automobile

This form of insurance works almost like your own personal automobile insurance. The two primary coverages are liability and physical damage. For example:

- Liability insurance protects the organization if one of the insured’s drivers causes bodily injury and/or property damage to a third party as a result of an accident.
- Physical Damage covers the damage to the insured’s own vehicle, i.e. the cost to repair or replace a damaged vehicle.
- Hired and Non owned liability insurance acts as excess insurance protecting the insured whenever employees operate their own vehicle in the course of business.

This coverage can be critically important for organizations that transport people in buses where there is a potential catastrophic exposure. Be sure that the policy does not contain any endorsements that restrict coverage when over 15 passengers are being transported in a single vehicle.

Umbrella

Umbrella liability is sometimes referred to as excess insurance. Technically this is not correct, however it does provide a word picture that makes it easier to understand how umbrella insurance works. An umbrella sits over the top of the insured's general liability and automobile liability insurance. For example:

- A school operates a bus that is used to transport students from their home to the school. The school has been negligent in the maintenance of the bus and the brakes have become dangerous. The driver reports that the brakes need work, but the school neglects to have the brakes fixed. The driver fails to maintain control of the bus and crashes, seriously injuring 22 students. The school carries \$500,000 in auto liability insurance and a \$1,000,000 umbrella. The families of the injured students sue the school for \$1,000,000. The automobile liability insurance policy pays \$500,000 and the umbrella pays the additional \$500,000.

Review

In all cases insurance contracts include language that restricts the scope of the coverage. Coverage is defined in the following sections of an insurance contract:

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 - An employee of a nonprofit organization is operating a company vehicle and is in an accident. They are afraid to report the accident so they tell the other party that they just need to drop the car off at the body shop and it will get fixed. Later a medical problem arises as a result of the accident and a claim is reported to the insurance company. The insurance company could deny coverage on the basis that the insured failed to report the claim in a timely manner.

Moving Forward

We live in a society that is easily the most litigious of all times. Even organizations that provide valuable services to the public utilizing volunteer labor are not exempt. It is the responsibility of the Board to be sure the organization they manage has a properly designed insurance program. The Board and its members can be held liable if there is a claim for which reasonably affordable insurance could have been purchased and the decision was made to run bare.

It's a good idea to conduct an annual risk survey wherein you and your agent review your account to make sure all exposures have been addressed. Source of exposures to consider include:

- activities and programs involving children
- transportation of people or property
- fundraising activities....we reviewed a nationally recognized nonprofit's coverage and discovered the agent had a special events bodily injury exclusion on the policy. This particular nonprofit held races, stickball tournaments and always thought they had coverage if someone had been injured...they had no such coverage.
- all premises should be inspected for housekeeping and overall condition of the property
- fund management...investment policy
- employee handbook review to be sure rules and procedures are in compliance with federal and state laws

Nonprofits represent unique exposures and it's important that you work with an insurance professional that understands nonprofit organizations and their exposures.

About Cooley & Darling Insurance Agency

Cooley & Darling Insurance Agency, Inc. is an insurance broker that specializes in writing insurance for nonprofit organizations. In all, CDIA writes insurance for over 1,500 local nonprofit organizations.

J. Andrew Cooley is the Director of the Nonprofit Program at CDIA. Mr. Cooley holds three insurance professional designation: Accredited Advisor in Insurance (AAI), Certified Insurance Counselor (CIC), and Certified Risk Manager (CRM)

Mr. Cooley works exclusively with Nonprofit Organizations in the Washington DC area. In doing so, he personally handles the insurance needs of over 1,500 Nonprofit Organizations.