

## **Does my HNBA Affiliate really need insurance?**

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Any entity can be sued, even if it is a not-for profit operation. Best practices related to risk management for a non-profit dictate that at a minimum your organization should have two insurance policies to protect volunteers and the entity itself, both a Directors & Officers policy and a Business Owners General Liability policy. There are some federal and state statutory protections in place, such as the Federal Volunteer Protection Act (VPA) and all states have some level of statutory protections in place for volunteers, but there is no blanket immunity for the entity itself, which is the primary reason to get insurance.<sup>2</sup>

State law protections are generally limited to the actions of volunteers.<sup>3</sup> Although these laws extend to volunteers of nonprofits, the benefits are generally written to protect an individual from unexpected consequences that result from their assistance of another. Many of these laws have conditions to the protections and are limited to, for example, only civil liability or only for medical assistance provided by a medical professional. While this article cannot answer if the various state laws and the VPA will protect you and your organization from liability,<sup>4</sup> it does suggest that the purchase of a Directors & Officers (D&O) policy, along with the purchase of a General Liability policy, will go a long way toward protecting your associations assets. Significantly, both policies will provide the defense cost to defend a suit alleging wrongful acts or even bodily injury.

The Directors & Officers policy not only protects the individuals past, present and future, but will also protect the entity itself for suits alleging wrongful acts. Some real life claims scenarios include: breach of bylaws, misappropriation of funds, conflict of interest, membership discrimination, financial mismanagement and even allegations of failure to manage. The D&O coverage usually contains employment practices liability which will provide defense against allegations of abuse or molestation between board members and volunteers.

In contrast to D&O insurance is General Liability insurance. Every entity has an exposure to actual or alleged “Bodily Injury or Property Damage” claims. Volunteer organizations can be prone to higher risk and sometimes a lack of care from volunteer led work can lead to injury of persons and/or property. There is also the possibility of someone being hurt when the association has a meeting, whether in a member’s office or a rented location, and the entity could be found negligent. A General Liability policy will provide for legal expenses and settlement payments when an entity or member is accused of negligence that causes bodily injury or property damage to others.

Some real life claims scenarios include injury to vendors caused by the associations’ display booth falling over, injury to the hotel employee who trips over the electrical cords used by a volunteer, and the vendor demonstration that goes bad causing injuries to a third party. In some claims, only legal fees are paid, in other claims settlements might be reached. In either instance, the General Liability policy protects a covered entities’ assets.

Other insurance protection to consider includes Cyber Liability, Crime Bond and Fiduciary Liability, all depending on the size and assets of your organization.

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<sup>1</sup> This article is not legal advice, but rather a brief survey of the insurance and liability issues surrounding non-profits.

<sup>2</sup> Charitable immunity has been abolished in the majority of states, though there are certain jurisdictions where some protections still apply. The common law doctrine of charitable immunity still survives in some form in nine states: Alabama, Arkansas, Georgia, Maine, Maryland, New Jersey, Virginia, Utah and Wyoming. The states with the least restrictive forms of charitable immunity are Arkansas, New Jersey and Virginia. In some states, there is a limitation on civil liability for any volunteer, including a director and officer, if the person executes their duties without compensation. See e.g. 10 Del. C. § 8133.

<sup>3</sup> For example, Good Samaritan laws are commonly written to protect those who assist people in danger or need of medical assistance.

<sup>4</sup> The Nonprofit Risk Management Center has various resources that can assist in the research of these laws available on their website. See [nonprofitrisk.org](http://nonprofitrisk.org).

If your affiliate handles any electronic information, they should consider a Cyber Liability policy, also known as Data Breach Liability policy. With more and more internet crimes being reported, Cyber Liability has become a hot topic. The standard liability policy excludes claims alleging internet breach of privacy or loss of data, so the need for such a policy has increased. This would include the loss of information that is contained on mobile devices. Policies include both First Party and Third Party coverages. First party losses include the loss of digital assets, cyber extortion, cost to locate and repair security breaches, cost of notifying customers as required by each state and loss of income caused by a breach. Third party losses include defending claims alleging network security and privacy breaches, employee privacy laws and electronic libel or copyright infringement.

An affiliate should also consider a Crime Bond to protect your tangible assets that have intrinsic value including money and securities. The primary coverage is for “employee dishonesty”, and managers must make sure the policy includes volunteers as covered employees in addition to any paid staff. In addition, a crime policy can include protection for losses from forgery to alteration, theft of cash on premises or in transit, and computer crimes that transfer assets from the insured’s location or from a financial institution.

Finally, those employees or volunteers of a board may be assuming a Fiduciary responsibility in the handling of your group’s assets. Since a fiduciary can be held personally accountable for the losses, they should demand a policy protecting them from claims of a breach in their fiduciary duties. This includes making high-quality, prudent decisions when handling the affiliates’s assets and documenting the process that lead them to a final decision.

**For more information please call Bill Coady at Walterry Insurance Brokers at 800-638-8791 or email [commercial@walterry.com](mailto:commercial@walterry.com). Mr. Coady is the HNBA’s insurance broker and specializes in non-profits so he can often get multiple rate quotes and would be very pleased to hear from any HNBA affiliates.**