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River Voices

Safety is no accident

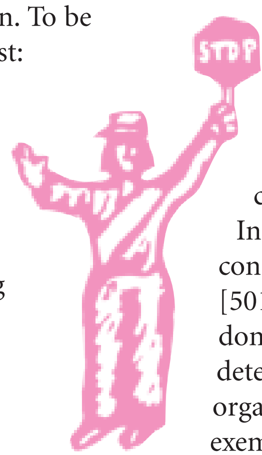
Are You Protected?

by Leslie T. White

Many members, volunteers and board members of grassroots river and watershed conservation groups primarily and justifiably focus on achieving their organization's mission to protect and restore rivers and their watersheds. Insurance, liability and risk management frequently are low priorities on everyone's radar screens. However, as evidenced by this edition of *River Voices,* these are important issues; the board needs to address them and create a culture where the health and safety of the people working with the organization, as well as the entity itself, are very important.

In today's litigious society, everyone is concerned about potential liability for damages while working or volunteering for a nonprofit organization. In most cases, to be liable one must act negligently. Negligence involves the failure to use proper care in personal actions or the failure to perform the standard of care that society expects of a reasonable person. To be negligent, the person or organization must:

- have a duty to the party;
- breach that duty;
- cause actual harm or damage; and
- have a reasonably close relationship between the breach and the resulting harm (proximate cause).



The federal and state governments have enacted numerous laws that may limit or eliminate a person's liability for their actions as a volunteer. To fully understand the protections provided to both the organization and its employees and volunteers, one must know about nonprofit corporations, tax exemptions and the various liability laws applicable to their organization.

Nonprofit Corporations

An incorporated nonprofit organization is an artificial creation of a state government where the corporation is considered a "person" in the eyes of the law. A corporation comes into being by filing the organization's articles of incorporation, bylaws, list of directors and officers and any other state requirements. The state authorizes the incorporation which continues to exist by complying with its state requirements. As a nonprofit corporation, the entity has all of the legal protections of a for-profit legal corporation with some modifications due to its nonprofit status. However, a nonprofit corporation usually does not have any special liability immunities or standing within the state.

Tax Exempt Status

Not all nonprofit organizations are the same under the Internal Revenue Code. The term "nonprofit" only refers to the organization's corporate status within the state of incorporation. Not all nonprofit organizations are "tax exempt." A tax exempt organization is exempt from paying federal and state income taxes, a privilege conferred on the entity by meeting certain requirements under §501(c) of the 1986 Internal Revenue Code. Due to the special considerations for charitable organizations [501(c)(3)], where donations are tax deductible to the donor, the Internal Revenue Service must approve the determination of an entity as a 501(c)(3) organization. Other 501(c) organizations can be tax exempt, but do not require IRS approval for that status, although they must file their exemption with the IRS.

Neither nonprofit nor tax exempt status by itself confers any liability immunities or limitations on a nonprofit, tax exempt organization. The type of tax

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River Network

Connecting People, Saving Rivers

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River Network is a national, nonprofit organization whose mission is to help people understand, protect and restore rivers and their watersheds.

From The President

credit: © River Network Collection

We work hard to build our organizations' boards, staffs, programs and funds. Insurance of the right types in the right amount can help protect all these resources.

On the other hand, excessive insurance wastes hard-earned general support dollars. Inadequate or improper insurance exposes a group to unacceptable risks. Extensive debate about what amounts and types of insurance to buy wastes valuable board and staff time. Worry about liability keeps groups from organizing events that could educate the public, build support and raise money. Fear of personal liability frightens away present or potential board members.

Some questions we face are generic to all nonprofit groups. Examples include fire, theft, health, workers' comp, and directors' and officers' insurance. Others, such as insurance for river-related recreational, educational, monitoring and clean-up events, are unique to our community.

This issue of *River Voices* provides information that can help you navigate through your group's own insurance issues. With your mind more at ease, you should be able to direct more of your energies to the business of saving your river.

Don Elder

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exempt status often is a factor in determining if an immunity or liability limitation exists.

Charitable Immunity

Many people mistakenly believe that the common law doctrine of charitable immunity applies to any nonprofit organization. Charitable immunity only applies to 501(c)(3) or charitable organizations as defined by state statute. The charitable immunity defense has been abolished in the majority of states, although nine (9) states have some vestiges of charitable immunity: Alabama, Arkansas, Georgia, Maine, Maryland, New Jersey, Virginia, Utah and Wyoming. The charitable immunity defense primarily benefits the charity not the individual.

Liability Exposures

A nonprofit can have *direct liability* for its actions or *vicarious liability* for the actions of its agent(s). A volunteer working on behalf of a nonprofit is an agent of the organization when the person acts on behalf of and with authority of the organization; the organization has the right to control the individual's actions; and the individual is acting within the scope of his or her duties. Therefore, the acts or omissions and care in the performance of their activities by a volunteer or employee are considered as the acts or omissions of the nonprofit corporation. According to the American Bar Association's *Guidebook for Directors of Nonprofit Corporations*, Second Edition (page 135):

> *As a general rule, the nonprofit corporation will not be exonerated from liability arising from the conduct of the agent simply because the organization is a nonprofit corporation or because the agent was uncompensated or a volunteer.*

Therefore nonprofits are responsible for the actions of their volunteers and are expected to foresee and address the risks of using volunteers. Volunteer management (selection and screening of volunteers, training and supervision including discipline and termination) is a critical technique for managing the risks of using volunteers.

Directors and Officers

As a board member, a person has unique legal duties and responsibilities that, if not met, expose the person to potential legal action. A director's liability does not arise just from corporate liability, but when the director is charged with a breach of duty or other harm to either the corporation or another party.

A suit against a director can be brought in three ways:

1. An outside party sues the director directly, alleging some injury done by the corporation and claiming the director as a principal or implied co-conspirator in connection with the injury.
2. Someone sues the director on behalf of the corporation (derivative action).
3. The director is held personally liable under various federal and state laws such as environmental claims, tax delinquencies (sales tax, payroll taxes, improper tax withholdings) and antitrust claims.

For the directors' protection, the board should seek indemnification from the corporation to the maximum extent permitted by the state's corporation law. Depending upon the wording of the indemnification provision, the organization promises to indemnify the director for defense expenses and the payment of any awards, judgments or settlements. Even if the organization has limited financial assets,

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Volunteer Protection Act of 1997

In 1997 President Clinton signed into law the Volunteer Protection Act of 1997 [42 U.S.C. §14503(a)] with the intent to encourage people to volunteer while easing their concerns about personal liability. Despite the good intentions of the law, it does not eliminate the need for insurance or implementing effective volunteer management policies and procedures.

First, while the Volunteer Protection Act (VPA) does limit the liability of the nonprofit, a nonprofit organization is still responsible and potentially liable for the actions or inactions of its volunteers. The law only provides immunity to the individual volunteer, not the organization.

A second concern is that the law does not prohibit someone from filing a lawsuit against a volunteer; it only bars recovery if the volunteer meets the requirements within the act. For example, the VPA does not immunize the volunteer if the behavior is willful or criminal misconduct, gross negligence or reckless misconduct. A good plaintiff's attorney will allege gross negligence and willful and wanton conduct. Therefore, a volunteer can still be sued, and the person and/or the nonprofit will have to defend the individual.

The law applies to "volunteers," any individual performing services for a nonprofit organization or governmental entity without compensation or anything of value in excess of $500. A "nonprofit" is a 501(c)(3) organization or any entity operated for public benefit, charitable, civic, education, religious, welfare or health purposes.

A volunteer is not liable for harm caused by his or her act or omission (failure to act when you have an obligation to do so), if acting within the scope of the volunteer's organizational responsibilities at the time of the incident. The volunteer is also protected if:

- The person is properly licensed, certified or authorized by authorities to so act (if required);
- The harm is not caused by willful or criminal misconduct, gross negligence, reckless misconduct or conscious, flagrant indifference to the rights or safety of another;
- The harm is not caused by operation of a motor vehicle, vessel, aircraft or other vehicle that the state requires a license or insurance to operate.

The VPA does not protect the volunteer if the individual is:

- Convicted for a crime of violence;
- Committed a hate crime;
- Convicted for a sexual offense;
- In violation of federal or state civil rights laws; or
- Under the influence of intoxicating alcohol or any drug.

The Volunteer Protection Act preempts state laws "to the extent that such laws are inconsistent with the Act." However, a state law may apply additional conditions such as:

- The nonprofit must adhere to risk management procedures, including mandatory training of volunteers;
- A nonprofit is liable for the acts or omissions of its volunteers to the same extent that an employer is liable for the acts or omissions of its employees;
- The immunity is rendered inapplicable if an officer of the state or local government brought the civil action; or
- A provision that limits the applicability of immunity to nonprofits that have a "financially secure source of recovery," such as insurance.

Each nonprofit should review its state liability laws and the Volunteer Protection Act to determine the extent of protection available to both the organization and the volunteers. None of these laws negate the need for general liability, auto liability or Directors & Officers liability insurance. None of the laws prohibit the filing of a claim or lawsuit against a nonprofit or a volunteer; it just limits recovery under certain circumstances. One of the purposes of insurance is to fund the expenses needed to investigate and defend a claim. Also, good risk management strategies and techniques will minimize the chance of a loss and/or reduce the severity of a claim.

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the nonprofit should include an indemnification provision within its bylaws or use other appropriate legal means. The indemnification provision should be funded by a Directors & Officers Liability insurance policy.

Volunteer Immunity

Many states have enacted laws that immunize volunteers from liability arising from their service to the nonprofit organization. The laws have various names such as Good Samaritan, volunteer protection, volunteer immunity, liability limitation, shield laws and, in a very few states, charitable immunity. The U. S. Congress enacted the Volunteer Protection Act of 1997 (VPA).

*The Nonprofit Risk Management Center (*www.nonprofitrisk.org*) has its* State Liability Laws for Charitable Organizations and Volunteers *available on its website. The book offers an overview of volunteer immunity laws and cites court precedents for each state. Staff should review the applicable laws for their state to educate themselves, the board and their volunteers.*

However, none of the state volunteer immunity laws or the VPA apply to the organization; they only protect the volunteer. The intent of the state legislatures and Congress was both to protect the volunteer to encourage volunteerism, and also to ensure the injured party is compensated for damages by the volunteer's organization.

State liability laws also contain exceptions to the immunity and protections provided to the volunteer. Most of the laws exclude protection if the volunteer's conduct was found to be willful or wanton, or grossly negligent. Many states have an exception for the operation of a motor vehicle, which is one of the most common causes of liability claims.

Other state exceptions apply to:

- fraud or fiduciary misconduct;
- actions brought by an attorney general or other state official;
- performance of certain professional services; and
- knowing violation of the law.

Several states require the organization to carry liability insurance, with specified limits and a few states limit the volunteer's liability to the amount of their personal liability insurance subject to a minimum limit. Another requirement may be that the organization has an indemnification provision within its articles of incorporation and/or bylaws. Last, a state may require that the volunteer has written authorization to act on behalf of the organization.

Summary

Nonprofit organizations have extremely limited liability protection as the result of their nonprofit or charitable status. The nine states with limited charitable immunity offer some protection, but it is inadequate for the well-being of the organization and its employees, board and volunteers. The various volunteer immunity laws offer some protection, but the laws only limit recovery and do not prohibit someone from suing the organization and/or its agents. Often a plaintiff's attorney will craft the suit papers to charge willful or wanton behavior and gross negligence to bypass the immunity barrier to recovery.

The best techniques to protect the organization and its agents and to prevent harm are an effective volunteer management program and other risk management techniques. Another vital technique is to purchase the appropriate insurance policies to protect the organization and its members, board and volunteers.

Leslie T. White, CPCU, CIC, ARM. Founder and president of Croydon Consulting, LLC, Leslie T. White brings more than 30 years' experience within the insurance and risk management industry to the table. For the last 10 years, she has chosen to specialize in serving nonprofits as an insurance and risk management consultant.

http://croydonconsult.com

An Ounce of Prevention is Worth a Pound of Cure

Risk Management: An Asset for All

by *Laura Alex*
Program Coordinator, The Watershed Institute
www.thewatershedinstitute.org

Watershed groups are innovators, passionate about their mission and inherent risk-takers in order to protect and enhance local waterbodies. Insurance coverage is critical to protect organizations from unforeseen events, but this protection does come at a substantial cost. After personnel costs, insurance premiums are usually the greatest financial burden to organizations.

There are strategies to reduce your risks, but these activities, such as developing policies and purchasing safety materials, create additional costs for the organization. These costs, however, should be seen as valuable assets and investments in your organization—not an unnecessary burden. Risk management is a means to reduce the liability in your organization. When your organization invests in the safety of its operations, there is a rippling effect felt both internally and externally. These new policies and materials improve the quality of your programs informing your staff, members and volunteers that safety is a value inherent in your organization's culture.

In the unfortunate event someone is injured and sues, your organization has reduced its potential liabilities by having systems in place to demonstrate that the organization was not negligent. The small investment may potentially save thousands of dollars in legal and settlement costs. Risk management challenges organizations to take proactive steps to reduce liability, which will protect both the future of the organization and its ability to advocate for clean water.

Where to Begin

First, create a team or select a lead person to coordinate the risk management activities. The group should meet frequently (monthly, bimonthly, quarterly) to identify, analyze, review, develop and monitor the progress for risk reduction. It may help to organize the framework for reducing risk under three categories:

- *General Operations:* List the various activities undertaken by the organization and rank the level of exposure (low, medium, high) to a lawsuit.
- *Board Operations:* Determine the potential risks from board members' actions or inactions. List the policies and practices current and incoming board members undertake to understand their responsibilities, stay informed about the status of the organization (financial and operational), obligations in by-laws and determine when and how the organization becomes involved in issues.
- *Property:* List all the major assets of the organization (vehicles, buildings, boats, A/V equipment, property, etc.). Determine if additional insurance coverage should be considered.

Steps to Manage Risk

Once the list of exposures have been identified and prioritized, the risk management team needs to develop tools and procedures to reduce the risk from high to low. The main burden of responsibility for the risk management team is to monitor and evaluate these risk reduction practices. There are four basic techniques to reduce risk: avoidance, modification, retention and sharing. *Avoidance* may be the most appropriate action for high risks. *Modification* consists of altering activities to make them safer for all individuals involved. *Retention* is assuming the costs for risk of harm or loss internally by, for example, purchasing general liability insurance policy and selecting a deductible. Risk *sharing* uses external funds to cover losses. One example for risk sharing is when the organization contracts out services, such as an electrician, and the contractor

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agrees to provide a service and assumes liability for the potential harm from that service.

Below are a few examples on how to modify your activities to reduce risk; organizations such as the Nonprofit Risk Management Center, www.nonprofitrisk.org, have additional resources and information available.

WAIVERS

If you have ever signed up for a canoe trip or had your child go on a school field trip, you are familiar with waivers. A waiver is used to reduce the risk of liability by having the participant surrender the right, claim or privilege to sue an organization. The person who waived rights should receive something in exchange and must sign the waiver voluntarily and knowingly. For example, an individual on a canoe trip receives an enjoyable and relaxing experience in exchange for not suing the organization if he twists his ankle while exiting the canoe. The use of waivers benefits the organization by providing a means to explain the potential risks involved in an organization's activities. Seek legal assistance to review the waiver and ensure that endorsers understand the risk involved. Be aware that courts may strike down waivers that are not sufficiently explicit about the risks of an activity, or that are poorly worded.

General Operations

- Provide appropriate trainings for staff and volunteers, such as safety training or financial management.
- Develop standard operating procedures for administrative and program activities, particularly internal controls to protect against fraud and theft.
- Develop a waiver for the organization's activities that explains the potential risks involved in an organization's activities. (See side box on Waivers).

Board Operations

- Create a board orientation process and develop policies to explain the rights and responsibilities for board members.
- Attend board meetings regularly to stay informed about the organization's activities and financial status (financial statements and budgets) of the organization.
- Avoid conflicts of interest by fully disclosing or abstaining from a vote.
- Understand personnel arrangements (between board and executive director).
- Pass resolutions when taking on outside issues (fighting a development).
- Write job descriptions and policies for relationships for board members and between the board and executive director.

Property

Whether or not your facilities are owned or leased, there are a few strategies the organization can undertake to protect its property.

- Develop a staff safety manual.
- Develop a schedule and conduct routine maintenance of equipment. Develop a checklist and file the records. (Records will help in claims filed against nonprofits for injury or accidents).
- Install a sprinkler system to stop fires from spreading. Keep in mind maintenance issues, such as faulty sprinklers.
- Install locks and burglar alarms to protect equipment, personnel and property.
- Install lights at entrances and near parking facilities to prevent injuries.
- Clearly mark hazardous materials, such as chemical monitoring supplies. Store them in proper cabinets to protect against accidental spills and compile the MSDS (material safety data sheets) on these materials.

Efforts at Stony Brook-Millstone Watershed Association

Stony Brook-Millstone Watershed Association (SBMWA) maintains a 830-

acre property with 17 buildings, equipment and vehicles, a community supported organic farm, summer camp, hiking trails, trustees, staff and volunteers. Staff hold workshops and outdoor activities (hikes, education programs, water quality monitoring, streambank restorations) on the property and throughout our 265-sqaure mile watershed. We have been fortunate over the last 59 years not to have had major claims taken on our policy. Our safety record is maintained not just by luck, but by proactive planning to ensure that our employees, trustees, volunteers and visitors are in a safe, comfortable and healthy environment.

In 2003, SBMWA began a formal workgroup, the Risk Management Team, to identify and manage the risks that can be associated with services we provide. The Team consists of representatives from each department and work is coordinated through our office manager. Since the team's inception, policies have been developed on: childproofing the nature center; emergency protocols including first aid training, fire drills and establishing first aid stations; outdoor activities and lightning; hazardous materials associated with our volunteer monitoring program; property management and tool safety; staff health forms and workman's compensation reporting procedures; criminal background checks for all employees who work with children; and deer management on the property. In addition, all of our volunteers must sign a waiver before volunteering, even for administrative work.

Specific Examples

Despite our excellent record at the Association, we determined that we needed to have clearer procedures. The following are three examples of policies (fire, safety and expense reimbursement) undertaken at the Association to protect the safety of everyone in the event of a fire and to ensure financial accountability.

Fire Drills:

The SBMWA Risk Management Team regularly holds fire drills in both main buildings (main office and nature center). Maps have been created and placed in each building showing fire exits, locations of fire extinguishers and locations of first aid kits. These are updated yearly in October. We purchased a portable escape ladder when we determined a second floor escape route was needed. Standard operating procedures exist for alarm procedures, those conducting the drill and the drill participants. The following excerpt comes from our fire drill policy.

Fire Drill Procedures:

- Study the fire map for the room and building in which you work. Know the various escape routes in your building.
- Have a fire buddy—preferably a person who sits near you or who you see regularly during the day—so you know their whereabouts most of the time.
- Familiarize yourself with these procedures.
- When alarm goes off, exit the nearest fire exit quickly and calmly.
- Last person to leave a room, makes sure everyone is out and the doors are closed.
- Portable ladder is under the left window in the Executive Director's Office.
- All staff from both buildings is to meet up at the Kingsford Room.
- Use Master Staff List to check attendance.

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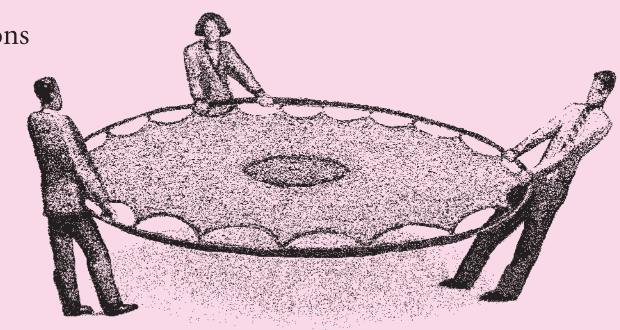
The Board's Role in Risk Management

Risk management is the proactive process of managing the dangers that threaten an organization. These dangers—fire, theft, employment issues, liability, and many others—if ignored or handled improperly, may destroy or severely affect the nonprofit's ability to function. However, an organization can address these issues effectively through the Board's commitment to risk management.

The Board is ultimately responsible for the organization and the achievement of its mission. Therefore, the board must act to conserve and protect the assets of the organization. Board actions to incorporate risk management into the fabric of the organization will meet this responsibility.

Suggestions

1. Integrate the five steps of risk management into all of the board's actions:
   - Identify and analyze the dangers or risks
   - Identify the various means for addressing the dangers
   - Select the appropriate alternatives
   - Implement the decisions
   - Monitor and revise as needed.



2. Establish a Risk Management Committee responsible for developing and overseeing the organization's risk management program.
3. Adopt a Risk Management Policy that affirms the organization's commitment to safeguarding its personnel and financial assets. The policy should complement the organization's mission.

Risk management is only successful if everyone shares in the commitment and works to protect the organization. The board's leadership in this endeavor will be modeled throughout the organization. All stakeholders will be encouraged, if not required, to work to protect and conserve the organization's programs.

Buttinger Nature Center's (BNC) additional procedures:

- Before BNC programs, give a 5 second speech on fires and escaping.
- Hand the fire map to accompanying teacher/parents on programs.

Reset Fire Alarm

- Only after any smoke has been cleared out of the building, or the source of the problem determined, should the alarm system be reset.

2

Safety Training Policy:

The "pouch" goes out with the coordinator on every nature program. The pouch contains a first aid kit, cell phone or walkie-talkie, a list of the program participants, waiver forms and contact information for parents, schools, etc. Staff members are trained and certified for first aid and CPR, and refresher courses are offered annually. First aid stations are prominently marked in each building, are inspected and restocked semi-annually.

Safety training and procedures address first aid, as well as, procedures to contact guardians late for the pick up, plans for severe weather and lightning, lost bus drivers, locking up the nature center, tick bites, bee stings and other favorite things.

3

Expense Reimbursement:

The policy helps maintain the financial management integrity at SBMWA, as well as, assist our controller's recordkeeping.

SBMWA Expense Reimbursement Policy: Staff must have their manager's written authorization (requisition/purchase order, etc.) prior to incurring an expense on behalf of SBMWA. To be reimbursed for all authorized expenses, staff must submit an expense report/voucher accompanied by receipts and approved by their manager. Staff must include the following information: name of purchaser, document the department and grant or budget line where it is to be charged and the manager's signature. The expense report/voucher is submitted to the controller each month.

If we are asked to conduct company business using personal vehicles, staff will be reimbursed at the current rate established by the Executive Director. This expense is also submitted on a monthly expense report/voucher.

Wrap Up

There are many simple strategies an organization may undertake to begin to reduce its risks. The investment of time in risk management is worthwhile for enhancing the safety and financial security of your organization. The reduction of risk may diminish your potential liability so that even if there is a lawsuit, your organization has taken steps to avoid negligence. Your organization will also have provided peace of mind to your staff and members. Staff will have a sense of security to know systems are in place. These efforts should also improve the quality of your programs where members continue to participate in your activities and new members join.

Establish a risk management team to review, address and reduce your organization's risks. Your proactive response will enable your organization to move forward continuously in a responsible manner that protects the present and future ability of your organization to achieve its mission. Good luck and stay safe!

The Watershed Institute is a program of Stony Brook-Millstone Watershed Association that seeks to enhance a vibrant network of citizen-based watershed organizations throughout New Jersey. In 2006, the Institute will release a guidance document for watershed groups on insurance, Insurance: The Shield of Protection.

Please note that the material contained in this article is not intended for, nor may it be used for, legal advice in any general or particular sense. Readers are encouraged to consult counsel to determine the measures necessary for their own organization.

Claims & Consequences

The Basics of Liability Insurance

by Charles Tremper
& Pamela Rypkema

While this article provides a foundation for buying insurance, to obtain adequate coverage you will need to work with an agent or broker to choose the best policies.

As a preliminary guide to insurance, this article summarizes the most common types of liability coverage for community-serving organizations. For some types of insurance, coverage depends on whether an individual serving your organization is an employee. Special arrangements may be necessary for volunteers. (This article uses "staff" to refer to any individual who serves on behalf of an organization.)

Reprinted with permission from the Nonprofit Risk Management Center, a nonprofit organization that helps other nonprofits cope with risk management, liability and insurance challenges. For more information on the Center's affordable resources, visit www.nonprofitrisk.org.

Liability of the Organization

The most common type of liability insurance is the general liability policy that covers most claims arising from bodily injury, damage to property owned by others, and some types of personal injury, such as libel and slander. General liability coverage may be combined in a "package policy" that includes coverage for several other types of claims.

General liability coverage, like most insurance, is designed to pay the expenses that come with lawsuits, regardless of whether the claim is true. Thus, a policy will almost always pay for the defense of a claim within the policy's scope. It will also generally pay the cost of settling the claim or paying amounts ordered by a court.

Although virtually essential, the general liability policy is not comprehensive, so you should know what you are getting. The policy exclusions typically appear on a long list of items, some of which may be covered by other policies and some of which you can have removed by requesting endorsements to the policy.

Usually excluded are pure financial losses, use of a vehicle, rendering "professional" services and types of harm that do not fit the list of covered claims. Excluded as "professional" may be the services of nurses, social workers, counselors, etc., whether or not those individuals are paid. Civil rights and employment claims are also commonly excluded.

An exclusion for sexual misconduct has become increasingly common. If you are vulnerable to such claims, you can ask the insurer to remove the exclusion, but you may be required to pay extra. Not having the coverage, if you need it, would be a bad bargain.

Staff Liability

Individual staff members can be named in a lawsuit, usually in addition to the organization itself. If so, they may need to pay for an attorney and sometimes have little choice but to settle a claim, even if they are blameless.

In most states, volunteer protection laws reduce those prospects for volunteers and even some employees of community-serving organizations, but no law provides complete immunity. Volunteers and employees of governmental entities may be protected by a tort claims act.

Insurance coverage depends on whether the suit is filed against an individual personally or against the organization itself. Claims against an organization that are within the scope of a general liability policy are covered by that policy regardless of who causes them.

If an individual is named in the suit, coverage may depend on whether that person is a volunteer or employee. The standard general liability insurance form includes employees but not volunteers. Options for covering volunteers are discussed below.

Volunteers may have adequate liability coverage under insurance policies they buy for other purposes. Most homeowners and renters insurance policies cover claims based on bodily injury or property damage. These two categories encompass ordinary accidents that are most likely to result in claims against a volunteer, but they are not comprehensive. (As explained below, a personal auto insurance policy ordinarily provides coverage for a driver engaged in community service.)

To be as clear as possible about coverage, a volunteer should check with the insurance agent who sold the policy.

Rather than requiring volunteers to rely on their own policies, an organization has several options for providing coverage. The first is to include volunteers the same as employees under the general liability policy.

The trick is to make sure the policy covers claims against volunteers themselves and not just claims against the organization for the actions of volunteers. If you look at the policy, the critical word "volunteer" should appear either on the list of "insureds" or as an endorsement, usually called "Additional Insureds-Volunteers."

Low cost is the chief advantage of adding volunteers to a general liability policy. In some cases the coverage for volunteers is free. In addition, when the organization and its volunteers are included under the same insurance policy, the legal defense is coordinated by the insurer.

Alternatively, an organization can purchase a volunteer liability insurance policy, which has a single purpose: to protect volunteers from the financial consequences of being sued. Because this type of policy covers only the volunteer, the entire policy limit is available to the volunteer, rather than being shared with the organization as it is in a general liability policy.

The most common volunteer liability insurance policy available today is an "excess" policy. An "excess" policy costs over and above coverage provided by any other policy the organization or volunteer may have. If no other policy applies, the volunteer insurance effectively becomes the primary policy.

With a few exceptions, a volunteer liability insurance policy covers the same types of claims as a general liability policy. Coverage for vehicle accidents and other types of claims is discussed below.

WORKERS' COMPENSATION HYBRID INSURANCE

Workers' Compensation customarily has two parts, known as Coverages A and B (aka Parts One and Two). The A/One portion provides insurance for employees in the event of illness or bodily injury as a result of conditions during employment. This is mandated by laws in every state and is "no fault" coverage governed by the state statutes. Regardless of circumstances, the employee receives the benefit. Coverage B/Two, however, is an employer liability insurance and protects the organization when their employees or surviving heirs sue because of work-related injury, disease or death. This should be integrated with any excess or umbrella liability coverages.

Injuries to Staff

Injured employees are ordinarily subject to the workers' compensation system. Employers typically purchase workers' compensation insurance to cover employees' claims, with various financing options available in some states. For volunteers, the matter is much less clear cut.

Volunteers who have their own health

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insurance coverage should be entitled to payment under those policies. Increasingly, though, health insurers require policyholders to pursue recovery from the party that caused their injury. The arrangements described below are suitable for that purpose and to pick up expenses that are not covered under a health insurance policy.

A few states allow the option of covering volunteers under workers' compensation. Where available, this alternative provides the assurance that volunteers will be adequately covered and may limit their right to sue the organization for their injuries. Insuring volunteers under workers' compensation has its drawbacks, though. Insurers are often reluctant to provide that coverage for volunteers, the cost is usually high, and if volunteers file claims, the rate for all of the organization's workers may rise.

Coverage for a volunteer's minor medical expenses may be available under the general liability policy. That policy typically includes a "medical payments" provision that will pay expenses up to a set amount, usually in the range of $1,000 to $25,000, if an individual is injured on the organization's premises or perhaps in the course of the organization's "operations."

Other insurance arrangements can provide coverage similar to workers' compensation. An accident and injury policy can be purchased to pay a volunteer's medical expenses associated with an accident. Some policies cover vision care and dental care when required as a result of an accident. The policy does not include compensation for pain and suffering or other intangible losses.

Accident and injury insurance is usually offered as an "excess" policy, meaning that it pays only after other available medical insurance is exhausted. This includes the volunteer's personal medical insurance policy or the medical payments portion of a volunteer's automobile insurance. If no other policy applies, the accident policy would pay first. Some of these policies have no deductible. If payment of a deductible is required, an injured volunteer would still be out-of-pocket by that amount. (There is no deductible under workers' compensation.)

An Accidental Death and Dismemberment (AD&D) benefit may be included with the policy. In this case, the insurer will pay a predetermined sum for loss of life, limbs or sight arising from a covered accident. Alternately, an AD&D policy can be purchased separately.

Finally, a disability policy can be obtained for volunteers to replace income they might lose if not able to perform paid employment. As with AD&D, disability coverage might be included with an accident and injury policy.

Motor Vehicles

When a volunteer or employee gets into an accident while driving on an organization's behalf, the organization and the driver may both be held liable for the resulting damages. While the driver's (or owner's) insurance policy will be the primary coverage, a claim may exceed the limits of that policy.

The type of insurance needed to cover motor vehicle accidents depends on whether the organization owns the vehicle. Commercial auto insurance ordinarily covers use of vehicles by employees. Volunteer drivers can be added to the policy by endorsement.

Volunteers (and employees) who use their own vehicles on behalf of an organization will ordinarily be covered by their own auto insurance policies. If the use is extensive, however, or if individuals who ride with them are charged for being transported, an exclusion may apply.

For staff driving their own vehicles, a non-owned auto policy can provide coverage for the organization and, if endorsed, the staff member. With some carriers, this coverage can be included by endorsement to the commercial auto policy or in a package based on the general liability policy. Policies vary tremendously regarding the conditions under which they will pay a claim.

To cover only volunteers' personal liability, a volunteer driver excess auto liability policy may be purchased. These policies will pay on behalf of volunteers for amounts exceeding their own auto policies or, for some policies, the state-mandated minimum. Thus, it is important for volunteers to maintain their own coverage. The policy will not pay for damage to the volunteer's vehicle or injury to the volunteer driver.

Boards and Executives

Directors and officers (D&O) insurance and association professional liability insurance (APLI) policies cover claims arising from governance and management. The traditional D&O policy covers only claims against directors and officers. Many D&O policies sold to nonprofits, as well as the APLI form, include employees and volunteers, as well as the organization itself.

Claims under D&O policies usually result from a bad decision that causes harm other than bodily injury or property damage, e.g., firing the executive director because she is "too old," using a targeted donation to pay general operating expenses, or ignoring reports that the executive director is misappropriating funds.

Whether a D&O policy covers these claims can be difficult to determine because D&O policies do not list specific types of claims covered. Instead, they typically extend coverage for any "wrongful act," which is very broadly defined. Various exclusions and limitations then narrow that coverage.

Some D&O policies, especially ones designed for business firms, exclude employment-related claims, including wrongful termination, discrimination or sexual harassment. A policy with that exclusion substantially reduces the coverage for nonprofits because those are the most common types of claims filed against nonprofits under D&O policies.

Almost all D&O insurance policies differ from other types of policies in several critical respects. A little knowledge about insurance is especially dangerous when purchasing a D&O policy. Thus, researching available coverage and working with an insurance professional who can clearly explain the implications of "claims made," "defense within limits," and "wrongful acts" will help you decide whether you need the coverage and, if so, which policy to select.

Special Events

Special events beyond the normal scope of an organization's activities may require special insurance arrangements. The need is clearest if the event involves types of risks that are not covered under the general liability policy or other coverage the organization has in place. For example, guests at a fundraiser might be served alcohol or taken for a boat ride.

The general liability policy also might not apply if the magnitude of risk is much larger than anticipated in the application for insurance. A small organization that holds a walk-a-thon or conference could fall into that category. Special arrangements may also be appropriate if the organization

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is assuming liability via a hold harmless agreement or other contract provision.

While special events policies can be purchased, coverage for many events can be obtained under the general liability policy or an endorsement to it. That approach is usually more economical than buying a separate policy. Your agent or broker should be able to advise regarding the alternatives.

Financial Assets

Money has a way of disappearing. While the best defense against theft and misappropriation is to safeguard your funds, insurance can provide additional protection.

Crime insurance protects you both from the outside world and your own staff. Insurers offer a menu of various coverage forms so that you can tailor the coverage to fit your needs. The policy generally covers money and securities, other personal property and property damage caused by burglars or robbers.

With respect to embezzlement or forgery committed by your staff, you may purchase a separate fidelity bond instead of selecting the employee dishonesty forms in the crime package. Irrespective of the form of purchase, this coverage can either specify individuals who handle money or securities, or bond all individuals connected with the organization. Policies that refer only to employees should be endorsed to include volunteers if they handle your funds.

Other Policies

Depending on the types and magnitude of the risks involved, a community-serving program may need a variety of policies other than the more common types described here.

For example, professional services may require malpractice policies, both for the individual practitioners and for the organization. The law recognizes, among others, physicians, nurses, dentists, pharmacists, social workers, attorneys, engineers, accountants, architects, realtors and insurance agents as professionals. Because these unique professional exposures are not covered by the general liability policy, the insurance industry now offers specialized policies designed for these services.

While an incidental exposure maybe covered by your general liability policy (e.g., offering first aid to a volunteer injured on the premises), substantial activity must be treated by a separate policy. Your insurance agent can help assess the necessity of specialized coverage based on the services you perform.

After having made arrangements for primary coverage (e.g., general, auto, employers' and professional liability), you may still need higher limits of liability. An "umbrella" provides such limits. The umbrella insurer lists, or "schedules," the primary policies, and extends such coverage after the primary policies are exhausted. For example, you might buy a five million dollar umbrella over a one million dollar general liability policy. If you purchase an umbrella you must keep all the primary policies in place during the umbrella policy period. Failure to do so may void coverage.

Not only will an umbrella provide limits over and above the liability limits afforded on the primary policies, it can also be written to extend coverage to exposures not otherwise covered. It can be written to "drop down" to the primary level to fill in gaps in the underlying policies. With most policies the claim will still be subject to a deductible, known as the "self-insured retention."

Umbrella policies that "drop down" normally cover infrequent exposures that do not warrant the purchase of a separate underlying policy. For example, renting a boat for a fundraiser may result in liability if someone is injured. If your organization does not own the boat, it might not need a watercraft liability policy. Instead, coverage could be provided by your umbrella.

Conclusion

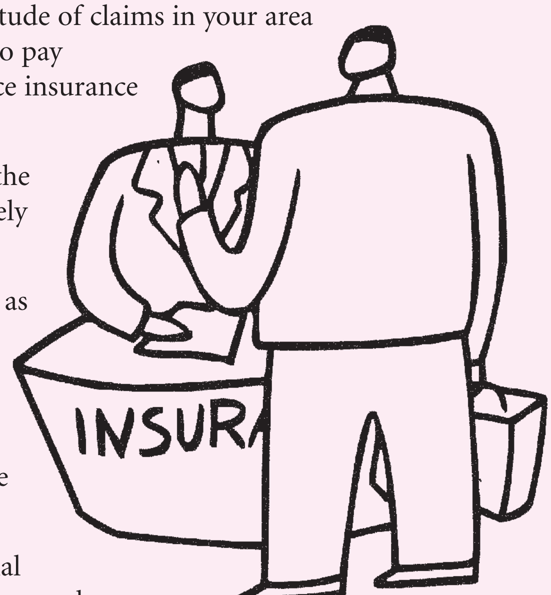
While insurance may be necessary in case something goes wrong and for peace of mind even if nothing bad ever happens, it cannot replace commitment to preventing harm. Because even the best prevention strategies may occasionally fail, though, insurance provides some assurance for your organization and the people who make it run. Using this article can help you to understand your options so that you get the coverage you seek without spending more than necessary.

This article is designed to provide accurate and authoritative information in regard to the subject matter covered. It is distributed with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

Buying Insurance

Even for a small organization, buying insurance can raise difficult questions that are far beyond the scope of this issue. Resources mentioned in this issue and insurance professionals can elaborate on the guidance offered here.

Assistance of an insurance professional can be especially helpful when choosing policy limits and deductibles. Potential liability is generally unlimited, so no amount of insurance will necessarily be adequate. A reasonable amount depends on the likelihood and severity of the risks for your organization. An insurance professional should be familiar with the magnitude of claims in your area and can help you decide how much of a loss you can afford to pay yourself. Choosing higher deductibles can substantially reduce insurance premiums.



If you have difficulty when applying for insurance, consider the application to be similar to a grant proposal. Then you can rely on skills you already have!

You can portray the organization in the most favorable light, as long as you are absolutely truthful. Neglecting to inform an insurer of a hazard may invalidate the policy. Failing to attach requested audit reports or other documents may result in a summary rejection of an application, which in turn makes obtaining insurance from another company more difficult.

As you describe the organization, keep in mind the one crucial difference between an insurance application and a funding proposal. For insurance purposes, an underwriter really does not care whether the organization does good deeds. What matters to insurers is the riskiness of the organization's activities and the extent of its precautions. Try to avoid words that may alarm an insurer. "Operating a Class V Whitewater School for juvenile delinquents" sounds scarier than "providing safe recreational opportunities for youth."

Finally, write out everything that you want an insurer to know. Telling something to an insurance agent may have no effect because agents themselves ordinarily do not decide whether to issue a policy.

WATER EVENT COVERAGE AVAILABLE THROUGH ACA

The American Canoe Association (ACA) provides insurance coverage for on-water activities to paddling clubs and other affiliated organizations under a group liability insurance policy. The ACA's policy provides excellent coverage underwritten by an A++-rated insurance carrier that protects ACA affiliates and individual ACA members against claims for bodily injury, property damage and medical expenses when these claims involve allegations of liability by the affiliate or its members. The policy also pays legal defense costs. The policy limit is $1 million per occurrence, and $5 million per year.

Starting in 2006, the ACA is offering River Network Partners an opportunity to participate in the ACA insurance program. Discounted coverage is available for Partner-sponsored, adult-supervised on-water activities, including cleanups, paddling trips and water quality monitoring activities.

In order to participate, Partners must meet certain requirements. First, they must be affiliate members of the ACA. To meet the needs of River Network Partners, the ACA and River Network have developed two options for ACA affiliate membership.

1) National River Cleanup Week. The ACA is offering a limited number of discounted short-term ACA affiliate memberships covering the ten days of Cleanup Week. Up to 30 Partners may become affiliate members for $125, a discount of $100 off the annual affiliate membership.

2) Annual Coverage. Partners joining the ACA for the full year (annual dues are $225) will be able to insure an unlimited number of stewardship activities without paying the per-activity registration fee (usually $25 per activity).

Participating organizations will be required to follow the ACA's Risk Management Guidelines, obtain signed liability waivers from participants and submit reports to the ACA for each insured activity. If the organization needs to name a landowner or land management agency as an "additional insured" on the policy, there is a fee of $20 per additional insured.

ACA
AMERICAN CANOE ASSOCIATION
Kayak & Canoe Recreation

Additionally, Partners must require all persons participating in an insured activity to be members of the ACA. Participants could satisfy this requirements by showing a valid ACA membership card, by purchasing a one-year membership in the ACA (available to Partner members at discounted rates) or by purchasing a one-time "event membership" for $10. Alternatively, the Partner may purchase event memberships on a participant's behalf. Partners that pledge to submit their activity reports using ACA-provided reporting forms earn 20 complimentary event memberships, a $200 value.

To learn more about the ACA's RN Affiliate insurance program, contact ACA Recreation Outreach, at 703/451-0141 ext. 23, or at gbabao@americancanoe.org.

Protect Your Staff ~ Protect Your Mission

Employee Benefit Insurance

Recruiting and retaining skilled employees in nonprofit has always been a challenge.

Unable to offer the highest salaries, the expensive benefits or the most generous pension plans, nonprofit organizations have traditionally relied on the deeper satisfaction and greater flexibility they could provide to employees.

The costs of even the most basic benefit like medical insurance, however, has been escalating annually at double-digit rates. Additionally, demographics indicate that in the next five years a large part of the experienced labor force—the baby boomers—will be retiring or cutting back on paid work. In many sectors of the nonprofit world, the problems of finding and keeping the best employees have risen to almost crisis proportions.

Because employee benefits are understood to be a key factor in attracting and keeping qualified and talented people, they are an increasingly important part of any strategic compensation formula. A well-designed benefits package increases a sense of security in staff members, helps reduce their financial stress, and allows them to focus on the work at hand. In addition, the benefits tend to foster an improved sense of well-being and the assurance that the organization places a high value on their employees.

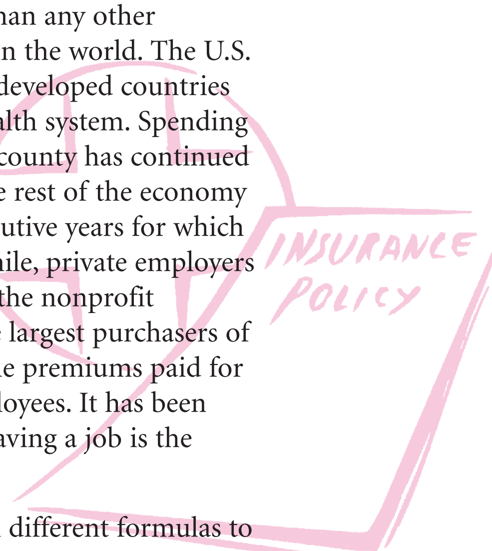
Some benefits have been mandated by federal and state laws: Social Security, unemployment insurance, workers' compensation are all required. Other benefits, however, are provided solely at the employer's option. These represent a significant allocation of the resources of an organization and can be more than one-third of the total cost of personnel. Surveys show that these so-called "fringe" benefits have become even more important to some job candidates than the annual salary.

There are a wide variety of benefit options for employers, but for decisions to be responsive and compassionate, they should be based on a careful internal assessment of employees' needs and an external assessment of the marketplace, possibly utilizing any local survey information that may be available.

The traditional three-legged stool of employee benefits has always been health insurance, disability insurance, and life insurance. In River Network's 2005 compensation survey of partner groups, 61.3% of the watershed organizations offered health insurance, 19.8 % disability insurance and 18.9 % life insurance. Similarly, a 2004 benefit survey of Oregon nonprofits by the MBL Group found that 78% offered health insurance, 33% short term disability, 49% long term disability and 58% life insurance.

Health Insurance

According to the Health Care Financing Administration, the United States spends more on health care than any other industrialized nation in the world. The U.S. is also one of the few developed countries without a national health system. Spending on health care in this county has continued to grow faster than the rest of the economy for the last five consecutive years for which we have data. Meanwhile, private employers in the U.S., including the nonprofit employers, remain the largest purchasers of health care through the premiums paid for coverage of their employees. It has been said that in the U.S. having a job is the national health plan.



Nonprofits use several different formulas to provide health benefits for employees while at the same time staying within their budgets. For example, the employer may pay the total premium costs for employee individual coverage, but the employee must pay part or all of the cost of covering

by Susan Schwartz
River Network
www.rivernetwork.org

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spouse and children. Another approach is for the employer to pay a fixed percentage (often 50%) for employee and family coverage, and the employee to pay the balance. A third way is for the employer to establish a monthly benefit credit amount (frequently $400-$500) with premium costs up to that amount covered; any costs in excess of the credit then are paid by the employee.

Indemnity/Fee-for-Service Health Plans

This is the traditional medical insurance plan that makes direct payment to the physicians or hospitals the insured chooses and pays the fees these providers charge less some deductible amount. This plan typically offers the most flexibility in choosing a physician or other provider, but has significantly higher premiums for the employer and out-of-pocket costs for the employee. These plans may cover only the costs of emergency and hospital care, or hospital plus medical care or a comprehensive combination of both. Metropolitan, Travelers, certain Blue Cross plans are examples of this insurance.

Health Maintenance Organizations (HMOs)

An HMO is an entity that provides or arranges coverage of pre-selected health services for members for a fixed, prepaid premium. It provides a full range of services including physicians, therapists, nurses, health practitioners, laboratories, hospitals, etc. Care is managed by a primary care physician, who will determine the type of treatment needed and make referrals to specialists as needed. In exchange for no or very low out-of-pocket costs, the employee receives all medical care in the HMO's network, as directed by the primary care physician. This type of health plan is also very cost effective for the employer. Kaiser Permanente is one of the oldest and most well-known of the HMOs.

Preferred Provider Organizations (PPOs)

These health insurance plans allow the insured to select a primary care physician, specialist or hospital, but the plan will pay a larger portion of the medical charges if the employee sees a "preferred provider" who has an agreement with the health plan to charge discounted fees. These discounts are usually passed on to consumers through lower out-of-pocket costs. Since there is no requirement to use the preferred provider, however, the employee may opt to pay higher costs. For the employer, coverage is more expensive than HMOs but less than indemnity plans.

Point of Service(POS)/Open HMO Plans

This is a hybrid health plan offering the employee the option to select service in different health delivery vehicles—HMO, PPO or fee-for-service—at the time of accessing the services, rather than making the selection between delivery systems at time of enrollment annually. The costs associated with care from the in-network providers are, of course, lower than care rendered by non-network providers, but this plan provides great out-of-network flexibility. Employer premiums at large insurers like Kaiser Permanente may be quite competitive with HMO plans.

Health Savings Account (HSA)

The health savings account, or HSA, was recently created by federal legislation as a consumer-directed health plan. A HSA allows an employee to set aside pre-tax dollars for future medical or long-term care premium expenses. The funds may be invested within a very broad range of options and then used for any qualified health expenditure, including alternative and preventive treatments. The funds can also roll over from year to year and are portable when an employee changes jobs. Unused funds can be saved for any future catastrophic medical need or even retirement. An HSA must be combined with a high-deductible health plan.

Disability Insurance

A disability insurance program is of particular consequence in providing employee security by guaranteeing that there will be income in the event of sickness or injury. The ability to earn money to meet expenses is an employee's most valuable asset, and yet it is estimated by the Social Security Administration that one of every three workers will experience a disabling condition at least once before age sixty-five. The stress of financial instability added to that of illness and medical uncertainty is one of the most frightening challenges for both individuals and families. There is a widespread perception that this is an expensive insurance, but in fact, the cost for either short or long term disability coverage can be as little as $17-$25 per month per employee. Often the same insurer that provides the life insurance benefit will provide the disability coverage as well, and even lower costs can be achieved by bundling these insurances.

Short Term Disability (STD)

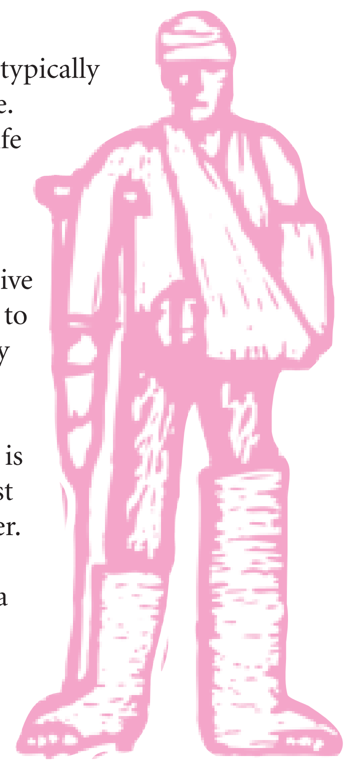
Short term disability (usually defined as less than 100 days) is easily designed to coordinate with an employer's already existing sick leave or paid time-off policies, or it may operate as a stand-alone insurance program. In either instance, this insurance can become effective almost immediately after the illness or injury, regardless of accrued sick leave balance. The effective date of coverage and the percentage of salary covered (60-85%) are flexible and may be designed to meet the needs of the particular employee group.

Long Term Disability (LTD)

Long term disability provides employees with a source of income, even if they are unable to work for an extended period of time. This insurance can be designed to supplement Social Security disability up to 60% of previous annual income and can provide that coverage up to the normal retirement age, when the employee becomes eligible for regular pension or Social Security benefits.

Life Insurance

The type of insurance program typically offered by nonprofits is term life. Insurance in the form of term life pays a specified amount upon the death of an employee in exchange for the premium paid. This is not only the least expensive form of insurance, but it is easy to administer and is billed monthly for the entire employee group. Enrollment is simple, and no qualifying medical examination is required. The premium is almost always fully paid by the employer. The life insurance coverage in nonprofits usually ranges from a fixed flat amount of $25,000 to formulas of one- or two-times annual salary. Some life insurance policies contain a special provision for an additional payment for Accidental Death and Dismemberment (AD&D). Such an additional benefit may be from $5,000 to one-times annual salary.



It is crucial that nonprofit organizations invest the time to review, analyze and update their employee benefit packages to retain and support their best people, to be competitive when recruiting new staff and to maintain the most cost-effective approach to providing these benefits.

Not all advisors are created equal:

Selecting an Insurance Broker

by Deborah D. Tompkins
CLU
www.tompkinsbenefit.com

There are many insurance brokers in the market who offer benefits consultation either in the role of an agent or of a consultant. But, a true expert has the relationship, experience and commitment needed to deliver and support the ideal benefits package for your organization.

Let's take a moment to understand what to expect from your broker, how to differentiate between brokers, what services a broker should provide, and how to conduct a Request for Proposal (RFP) process to determine how the relationship with a broker can work in favor of your organization and its employees.

Purpose of a broker

A broker brings resources and relationships you would not normally have that can be supportive to your employee benefit goals and objectives. They can save you money, provide you with alternative ideas, design customized plans, help facilitate change, educate and support your employees and streamline your own internal processes related to your benefits program.

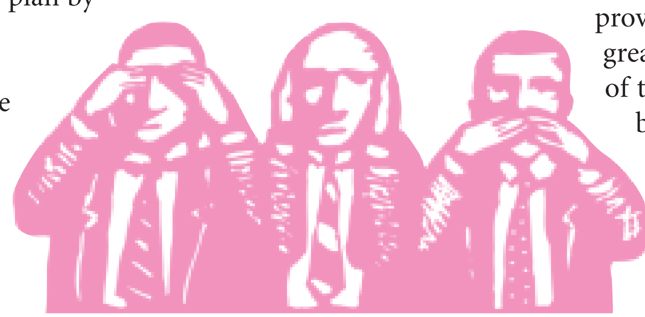
A broker shows you both the positive and negative attributes of the benefits available, regardless of any commissions they stand to gain from selling these products. A broker puts your company and employees' well being first and should be able to point out the details that could affect your benefits plan today and also into the future. Ultimately, a broker's first priority should be to help you become a better steward of your company's benefits plan by providing the information and industry knowledge you need to allocate your organization's benefits dollars wisely.

Differentiating factors between brokers

There are two main types of broker: the agent and the consultant. An agent is compensated for their work through commissions paid by the insurance products sold. A consultant is compensated through a fee paid by the organization directly to the consultant in lieu of commissions. Some states have requirements pertaining to how brokers are compensated. For example, in the State of Oregon all brokers must be compensated with commissions for their work on behalf of smaller organizations and are precluded from charging fees to these smaller organizations.

Brokers can also be compensated through what is termed contingent commissions, overrides, leadership awards, production bonuses or trips. The insurance companies have several different compensation programs that they use to encourage brokers to sell their insurance products over those of a competitor. Make sure you ask your broker if they accept any form of compensation outside of the standard commission or fee. A broker who doesn't accept this extra form of compensation is one that can truly say they are unbiased in their recommendations of plans and products to your organization.

In addition, you can determine which broker has taken more time to know the industry through the attainment of a variety of designations such as CLU, RHU, CASL or CEBS. These designations indicate that the broker has taken courses specific to the employee benefits business that will provide them with a greater understanding of the market and how best to advise employers given the ever changing marketplace.



What a broker should do for you

A broker should routinely provide a full discussion of options no less frequently than annually to your organization; this would include types of funding for the plans, types of plans available and competitive analysis of plans and insurance companies, in addition to benchmarking data specific to your organization.

They assume responsibility for plan implementation, transitions and contract management. They negotiate with the insurer and work with the insurer's underwriting department to craft programs that would meet your organization's goals and objectives, not to mention budget. They assist you to draft messages to employees in the event of plan changes, and make sure that all of your compliance requirements are met through any plan design change or implementation of a new benefit.

The broker should operate as an extension of human resources to provide advocacy services in the event questions arise, misunderstandings occur or incorrect benefits are paid. They train your organization to comply with all of the federal and state health regulations, and should be able to provide online resource centers and customized benefit and human resources websites for use by your employees. For your staff, they should provide training in the area of employee benefit management and administration. Lastly, they should also have the resources and expertise to craft wellness programs and coordinate benefit fairs suited to your organization.

Conducting a broker search

A formal Broker Request for Proposal (RFP) can be submitted to several selected brokers, or you can conduct a less formal process by inviting brokers in for a discussion of their services. Keep in mind that you can control the process better, and eliminate a sales pitch, if you solicit written responses to questions, conduct a series of interviews with several individuals from your organization participating and develop a matrix to weigh and balance the different broker's skills and services prior to a final decision being made.

Questions in the RFP should touch on the following topics: standard services and any additional services offered by the broker, legislative compliance support, broker compensation, educational support to your organization and individual employees, the brokerage firm's organization, staff and culture and a list of references. Make sure you also ask for proof of errors & omissions coverage and copies of their licenses.

There are several good RFP formats available for use through the Society for Human Resource Management's website (www.shrm.org), or sample broker RFP's can be obtained by emailing the author at info@tompkinsbenefit.com.

Calling on references—both existing clients and former clients of the broker—is always a good idea to glean what services are provided, how responsive the broker is and the length of their client relationships. In addition to calling client references, also take the time to call others not on the client's reference list—such as the account manager at the insurance company you currently work with. With the understanding that the account manager can't play favorites, they can still be a wealth of information to you about various brokers in your community.

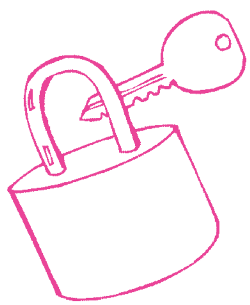
Deborah Tompkins is the president and founder of Tompkins Benefit Group, Inc., an independent benefits consulting and brokerage firm located in Portland, Oregon catering to the needs of employers with 2 to 2000 employees.

VOICES FROM THE FIELD

Rafting the Colorado River with a life jacket; backing up computer data on a regular schedule; kayaking with a helmet; installing a working fire alarm in your office…all of these things are little insurance policies to keep you happy, healthy, safe and financially sound. You hope that the life jackets, helmets, computer disks and fire alarms will never be needed, but if they are, won't you be happy that you took the time, effort and expense to make sure your insurance items were in place? Though I have yet to meet a river conservationist whose primary impetus for entering the movement is their love of claims and policies, the reality is that insurance is a part of our world. Highlighted below are examples from our Partners demonstrating the confluence of river conservation and insurance.

I have been the executive director since July of 2001. We have filed one Workers' Comp claim—a co-worker slammed her wrist against a door while helping clean the office. I think it covered everything, though there might have been a lot of paperwork. I turned it over to her to deal with, and I only signed things as necessary. We tried to file a claim on our liability insurance when our expensive digital camera fell in the water on a canoe trip with the Riverkeeper, but no go. It was out of the office, so not covered. Otherwise we have been lucky not to have to file.

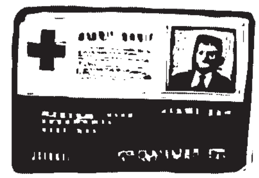
Pamlico-Tar River Foundation (NC)
www.ptrf.org



Our organization just purchased Directors and Officers insurance. Our projects are getting bigger every year, and we are more and more likely to expose ourselves to some sort of liability. It took a lot of searching to find 3 or 4 carriers to choose from that would insure us. Several refused to cover an environmental group at all. Our board didn't want to be distracted by this seemingly off-topic issue until they realized that they could be held accountable individually in a law-suit. That got their attention!

I think we still need other policies, but it is hard for us to justify the expense when money is tight.

Duck and Otter Creeks Partnership (OH)
www.dopartnership.org



We haven't had to file a claim, but within the last four or five issues of *Grassroots Fundraising Journal* there was an article about a conservation group whose bookkeeper embezzled from the group. I'm not sure if they filed a claim or not.

Our insurance coverage is with Franey Muha Alliant, which offers a Conserv-A-Nation package. I think this coverage was originally made available to Nature Conservancy chapters or one of the nationals. We have general liability, D&O, workers' comp., and there's even a policy that will cover volunteers—up to $75,000/incident for a reasonable amount.

Copper River Watershed Project (AK)
www.copperriver.org

The basement of our old office was flooded and we lost hundreds of copies of our publications. It was heavy rain that flooded the basement. We did have appropriate coverage and were successful in getting a $10,000 claim for the loss.

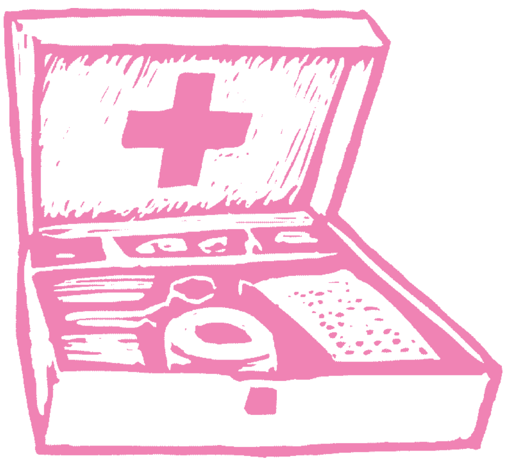
Partnership for the Delaware Estuary *(DE)*
www.delawareestuary.org

VOICES FROM THE FIELD

Ever since the insurance company wanted to count membership and charge us for insurance based on the number of persons we considered members, even though we do not charge to be a member, we have done without insurance. But, that has meant that we no longer hold public meetings, and we no longer sponsor public cleanups or river trips or events that might bring about any possible litigation! It's a sad fact, but either we changed our policy of inclusion for all that wanted to be part of our effort or we just stopped holding events…period. We chose the latter. It has had a profound effect on Friends of the Lower Greenbrier River. We no longer have to come up with the $1000s annually and therefore, don't need to do any major fundraising to cover insurance costs. We have decided to live below the horizon and present our program at schools and at public events put on by other organizations.

We are slowly losing steam for forward motion and find that this public interface does not energize our base or allow us as much public interaction as we need to continue to build on our previous work.

Friends of the Lower Greenbrier River *(WV)*
www.lowergreenbrierriver.org



Green Valleys Association just took out D&O insurance last month for the first time for $2,000/annually. Our carrier is Arthur Hall. We have had no reason to use the insurance, but since we have a summer camp, a pond on site, an estate house and 197 acres that might look delicious to some as good target for easy money, the Board made the decision after 2 years of discussion to make the move.

Green Valleys Association (PA)
www.greenvalleys.org

REALITY CHECK…

"In our experience, watershed and river conservation organizations do not experience frequent claims, however, even the smallest of them may find themselves ensnared in a large class action suit that has little relationship to any of their work. How could this happen? If there is a flood or other problem below the watershed area, sometimes landowners will sue every organization and company that has ever done any work on that watershed and allege that that work either caused or contributed to the flood or other problem. One small nonprofit which we insured was involved simply in planting trees in holes that were already dug. There was a class action suit related to earth movement in this area, and the nonprofit was pulled into a protracted lawsuit that went on for years. None of the plaintiffs were let out, no matter how minimal their participation. The cost of defending such a lawsuit is extreme. Again, these are not frequent occurrences, but the risk is there. Additionally, insurers may be wary of events where large groups of the public are encouraged to spend the day on the water. Other potential exposures include slap suits by polluters who wish to silence those who point out violations.

Consequently, even ANI-RRG, an insurer governed by its nonprofit insured-members and insures many difficult risks, must evaluate carefully organizations of this nature. Because we are stewards for thousands of other nonprofits who are insured by us, we often are not able to offer coverage to these conservation organizations, particularly those who do watershed work, even though our staff personally highly values the work of these organizations."

~ Pamela E. Davis, President/CEO
Nonprofits' Insurance Alliance of California (NIAC)

Insurance Terms

Acute Care
Short-term medical treatment, usually in a hospital or other inpatient facility, for an episodic illness, acute injury or when recovering from major surgery; commonly covered under medical plans.

Agent
Licensed insurance professional who markets and explains insurance products and places coverage, limited to the carrier(s) with whom they have a contract; agents represent the insurance companies *(See "broker" below)*.

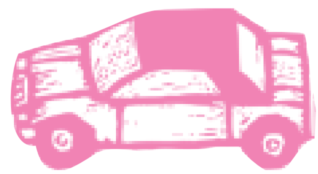
Aggregate Limit
Amount that insurer will pay during an annual policy period regardless of number of occurrences *(See "occurrence" below)*; usually in addition to any legal defense costs and may be a limit per site in a multi-location organization.

A.M. Best Company
Independent company that rates insurance companies and health insurance plans as to their financial history, stability and probable claims-paying ability.

Appraisal
Survey by an independent expert estimating the amount of monetary damage to property, the cost of any repairs or the determination of a complete loss.

Broker
Licensed insurance professional, like an agent, but technically represents the client and not the insurer *(See "agent" above)*.

Business Auto Policy (BAP)
Insurance that covers automobile physical damage and liability for organization cars; may also include autos of board and staff and rental cars used for organizational business in same policy or in add-on policy.



Business Interruption Loss of Use Insurance
Coverage designed to protect against loss of income caused by an insured peril in accordance with the insurance policy and/or compensation for loss from the use of insured property.

Cafeteria Plan
Plan which offers a choice between two or more qualified benefits or a choice between cash and one or more qualified benefits and which complies with Section 125 of the Internal Revenue Code *(also known as flexible benefit plans or flex plans)*.

Certificate of Insurance
Schedule of all the types of insurance written, policy dates and coverage limits for the organization.

Claim
Demand for payment under an insurance contract for the estimated or actual amount of loss.

Claims-Made Basis Policy
Liability coverage requiring that claims, in order to be covered, must be reported to the insurance company while the policy is in force; this is in contrast to the more common occurrence form policy *(See "occurrence form policy" below)*.

Co-Insurance
The amount of the services paid by the insured after a deductible has been met. This is usually expressed as a percent of the charges, i.e., 80% of lab charges are covered by insurance and 20% are billable to the insured. Some plans call this a co-payment *(See "co-payment" below)*.

Co-Payment
The amount the insured pays after satisfying a deductible. This is usually expressed as a flat, fixed fee, i.e. $10 copay for each MD visit.

Commercial General Liability (CGL) Insurance
Insurance that covers liability risks and exposures common to all organizations; includes three basic sets of agreements and exclusions: Coverage A=General Liability, Coverage B= Personal and Advertising Injury Liability, Coverage C=Medical Payments.

Commercial Property Insurance
Insurance of buildings, equipment and personal property of an organization against physical loss or damage; usually also includes the personal property of anyone on the site and any property in the custody of the organization, even if temporary.

Complementary/Alternative Medicine (CAM)
Form of treatment other than standard conventional medical practice. This includes acupuncture, chiropractic, naturopathy, homeopathy, massage, herbals and Chinese medicine, progressive relaxation and guided imagery, etc; may not be covered under medical plan or have very limited coverage.

GLOSSARY

Conditions
Provisions that set forth the rights, duties and responsibilities of the parties to an insurance contract; conditions may be found in any section of the contract.

Crime Insurance
Insurance that protects an organization against theft of asset by insiders or outside third parties; usually includes a fidelity bond *(See "fidelity bond" below)*.

Declarations
Part of the policy that provides detailed information about the insured, the insurer, and the coverages.

Deductible
Amount for which the insured is responsible when a claim is made; general rule is the higher the deductible, the lower the premium.

Directors & Officers (D&O) Liability Insurance
Insurance that protects against claims of wrongful acts, actual or alleged errors, misleading statements, neglect or breach of duty, omissions by the board of directors and other insured persons (i.e., executive director, vice-president); may or may not include employment practices liability insurance *(See "employment practices liability insurance" below)*.

Disability Insurance
Coverage for employees that provides a degree of financial security should the person be sick, injured or unable to work; two types: short term disability (STD) that is typically for the 31-90th day of illness/injury and long-term disability (LTD) that provides coverage from the 91st day on; disability is defined by insurer and may not coincide with the Social Security Administration or Workers' Compensation Board determination.

Employee Benefits Liability
Insurance that covers errors and omissions in the administration of employee health or pension benefits.

Employment Practices Liability Insurance
Insurance usually covering organization, board members and staff against claims having to do with the recruitment, hiring, work environment, termination of employees; typically covers claims for discrimination and harassment.

Endorsement
Written amendment attached to a policy that modifies the terms of the insurance contract.

Excess Liability Insurance
Coverage over and above primary insurance but mirrors that insurance; comes into play when primary benefits are exhausted; common for professional liability.

Exclusion
Part of the insurance contract that excludes coverage of certain persons, property, locations or events/perils. Also, health conditions that are specifically not covered by a health plan, usually a pre-existing health condition. A pre-existing condition such as heart disease or diabetes may be excluded from coverage by a health plan altogether or for a limited period after enrollment.

Extended Coverage
Clause in an insurance policy or in an endorsement that provides additional coverage for other hazards or risks than those provided under the basic policy provisions.

Fidelity Bond
Bond that reimburses an organization for employee theft up to the stated insured amount; may be purchased alone or as part of crime insurance coverage *(See "crime insurance" above)*.

Flexible Spending Accounts
Special accounts typically funded by an employee's salary reduction to help pay for certain expenses not covered by the employer's plan or insurance contract. The advantage of these accounts is that after-tax dollars are converted to before-tax dollars, thereby reducing the actual cost of expenses.

Group Insurance Program
Special insurance programs usually developed to serve some homogenous (geographically/shared employer/organizational membership, etc.) group, so that they may take advantage of better coverage and/or lower premiums and/or special features.

GLOSSARY

Health Insurance
General term for any insurance that directly covers illness or accident regardless of fault; may include vision, dental and alternate care coverages, separately or as part of the basic contract.

HMO (Health Maintenance Organization)
An HMO is an entity that provides or arranges coverage of pre-selected health services for members for a fixed, prepaid premium. It provides a full range of services including physicians, therapists, nurses, health practitioners, laboratories, hospitals, etc. Care is managed by a primary care physician. This physician will determine the type of treatment needed and refer to a specialist if necessary. In exchange for no or very low out-of-pocket costs, the insured receives all medical care in the HMO's network, as directed by the primary care physician.

Indemnity Plan
This is the traditional medical insurance plan that makes direct payment to the physicians or hospitals the insured chooses and pays whatever fees these providers charge. This plan typically offers the most flexibility in choosing a physician, but has significantly higher premiums and/or out-of-pocket costs for the insured.

Insurance-to-Value
Amount of insurance written on property is approximately equal to its value.

Insuring Agreements
Part of an insurance policy that states the coverage of the contract.

Liability
Any enforceable obligation under the law.

Liability Insurance
Insurance that protects against any monetary damages in a civil suit due to an accidental bodily injury or property damage.

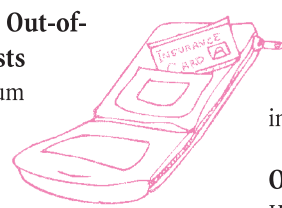
Life Insurance
Insurance which pays upon the death of the insured to the named beneficiary; usually combined with Accidental Death and Dismemberment; most commonly "term insurance" *(See "term life" below)* is the type of policy provided by an employer.

Lifetime Aggregate or Maximum
The maximum benefit payment provided under a plan or insurance contract.

Limit of Liability
Maximum amount that an insurer agrees to pay in the case of loss under policy contract.

Loss
Value reduction in an insured's property caused by an insured peril, the amount sought in a claim, or the amount paid on behalf of an insured under an insurance contract.

Maximum Out-of-Pocket Costs
The maximum amount of money you will have to pay from your own funds for deductibles, co-payments or other expenses during a specified period of time.



Named Insured
Individual or organization with whom an insurance contract is made and who is specifically named in the policy; additional individuals or organizations can also be added as named insureds.

Negligence
Failure to use a standard of care that a reasonable and prudent person would employ.

Network
A list of hospitals, physicians, laboratories, pharmacies and other health care providers who participate in the insurance plan's health delivery program.

Occurrence
Accident or loss, including any continuous or repeated exposure to substantially the same general harmful conditions, that results in bodily injury or property damage.

Occurrence Form Policy
More common form of liability in which a claim under a policy may be reported at any time, even years after the policy expiration date, and may still be covered; typical in D&O claims.

Out-Of-Plan
This phrase usually refers to physicians, hospitals or other health care providers who are considered non-participants in an HMO or PPO. Depending on an individual's insurance plan, expenses incurred by services provided by out-of-plan health professionals may not be covered at all, or covered only in part by the insurer.

Outpatient Care
Health care services (such as surgery) with no stay overnight in a hospital or inpatient facility. Many insurance companies have identified a list of tests and procedures (including surgeries) that will not be covered unless they are performed on an outpatient basis. The term outpatient is also used synonymously with ambulatory.

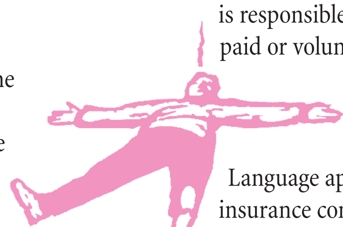
GLOSSARY

POS Plan (Point of Service Plan)
A hybrid health plan offering the insured the option to select service in different health delivery vehicles—HMO, PPO or fee-for-service—at the time of accessing the services, rather than making the selection between delivery systems at time of enrollment annually. The costs associated with care from the in-network providers are, of course, lower than care rendered by non-network providers, but this plan provides out-of-network flexibility.

PPO (Preferred Provider Organization)
These plans allow the insured to select a primary care physician, specialist or hospital, but the plan will pay a smaller portion of the medical charges if the insured sees a "preferred provider" who has an agreement with the health plan to charge discounted fees. These discounts are usually passed on to consumers through lower out-of-pocket costs.

Pre-certification
In order to assure that you will receive the fullest coverage, certain plans require you to report in advance any non-emergency surgery, procedures and/or hospitalizations you will undergo. Some plans may require immediate notification, even in an emergency. Without this certification, you may not receive maximum coverage for care provided.

Premium
The amount that the customer (aka policyholder)—the insured and/or his/her employer—pays for the contracted insurance coverage, usually expressed in terms of monthly cost.



Primary Care Physician
A physician who practices internal or family medicine, pediatrics or general practice, and in an HMO acts as a "gatekeeper" to decide when patients need to be seen by a specialist.

Professional Liability Insurance/Errors & Omissions/Malpractice
Insurance against damages arising from rendering or failing to render professional services.

Premises
Building insured or containing the insured property; may also include an adjacent area.

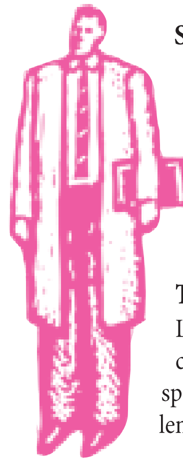
Property Damage
Physical injury to, destruction of or loss of use of tangible property.

Provider
Any person or organization that provides health care, such as a physician, nurse, therapist, hospital, laboratory, nursing home, clinic, pharmacy or any other formal health care giver.

Replacement Cost
Coverage which will reimburse the amount needed to replace any lost or damaged items with new items of a similar nature.

Respondeat Superior
Legal doctrine that the organization is responsible for the actions of its paid or volunteer staff.

Special Endorsement
Language appended to an insurance contract that details coverage in non-typical circumstances.



Special Events Insurance
Insurance for organizational events outside the scope of day-to-day operations and activities.

Term Life Insurance
Life insurance for which coverage only exists for a specified term (one year, length of employment, etc.).

Umbrella Liability Insurance
Excess coverage over the primary CGL or BAP coverages

Underwriting
Process that evaluates an applicant and their property against pre-established criteria for insurability to determine whether the applicant is accepted or rejected and whether they will pay standard or modified rates.

Waiting Period
The time period between an employee's date of hire and their eligibility to receive benefits under a plan or insurance contract; typically 30-60 or 90 day waiting periods.

Waiver
Giving-up of a right or privilege; commonly used by non-profits at special events or recreational programs to waive the right to sue in the event of loss or injury; often set aside by courts.

Workers' Compensation Insurance
Mandated coverage an employer must pay for on-the-job injury; specific benefits regulated by the states.

Resources & References

ARTICLES/FACTSHEETS

State Liability Laws for Charitable Organizations and Volunteers
www.nonprofitrisk.org/pubs/PDFs/sll.pdf

Frequently Asked Questions: Risk Management and Insurance
www.asu.edu/copp/nonprofit/asst/asst_ask_faq_risk.htm

An Insurance Guide For Nonprofit Organizations
www.insurance.wa.gov/factsheets/factsheet_detailprint.asp?FctShtRcdNum=37

Nonprofit Directors and Officers Insurance: The Good, the Bad and the Ugly
www.guidestar.org/news/features/do_insurance.jsp

How to Buy Event Insurance
www.bizbash.com/content/editorial/e5199.asp

D & O Insurance Explained
www.insurepro.net/html/directors_and_officers_explained.asp

ORGANIZATIONS

Nonprofit Risk Management Center was established in 1990 to provide assistance and resources for community-serving nonprofit organizations. As a nonprofit, the Center is uniquely positioned to both understand and respond to questions with practical, affordable suggestions for controlling risks that threaten a nonprofit's ability to accomplish its mission.
http://nonprofitrisk.org

Center for Nonprofit Leadership Management exists to advance nonprofit leadership practice so that organizations can better achieve their mission. And whether the mission is housing, youth development, recreation or neighborhood revitalization, effective nonprofit organizations improve individual lives and enhance our entire community.
www.asu.edu/copp/nonprofit/index.htm

CharityFirst insures over 5,000 nonprofit organizations throughout the United States. Their online library contains various risk management resources including articles about The Volunteer Protection Act; insurance basics; human resources practices and more.
www.charityfirst.com

Technical Assistance for Community Services provides knowledge, skills and resources to over 6000 nonprofits. Their Nonprofit Helpline assists over 3000 callers each year. The people who lead nonprofits are powered by their passion to create a better world. It's their goal to make the "business" of running a nonprofit less complex and trouble-free, so the work can stay focused and dreams can be delivered.
www.tacs.org/index.asp

GuideStar connects people with nonprofit information. Their website is a clearinghouse of services and information, including a variety of resources pertaining to insurance. While you will be able to use many features on their website, you will be required to register to have access to their full range of services.
www.guidestar.org

Alliance for Advancing Nonprofit Healthcare's sole purpose is to protect and enhance the abilities of nonprofit healthcare organizations to serve society and their individual communities. Through research, public education and advocacy, the Alliance seeks to provide a strong, cohesive and persistent "voice" for a wide range of nonprofit healthcare organizations sharing many common goals and challenges—hospitals, health insurers, nursing homes, malpractice liability insurers, home care providers and others. In addition, through education and other types of programs, the Alliance seeks to enhance the performance of nonprofit healthcare organizations in carrying out their unique roles and responsibilities.
www.nonprofithealthcare.com

Alliance of Nonprofits for Insurance, Risk Retention Group is a 501(c)(3) tax-exempt nonprofit insurance company whose mission is to be a stable source of reasonably priced liability insurance for 501(c)(3) nonprofits.
www.ani-rrg.org

The National Association of Insurance Commissioners seeks to assist state insurance regulators, individually and collectively, in serving the public interest and achieving the following fundamental insurance regulatory goals in a responsive, efficient and cost effective manner, consistent with the wishes of its members:

- Protect the public interest;
- Promote competitive markets;
- Facilitate the fair and equitable treatment of insurance consumers;
- Promote the reliability, solvency and financial solidity of insurance institutions; and
- Support and improve state regulation of insurance.

www.naic.org/index.htm

AM Best is a world wide insurance-rating and information agency. It is also the largest and longest-established company devoted to issuing in-depth reports and financial-strength ratings about insurance organizations. Its flagship publication and database, *Best's Insurance Reports*, offers the largest coverage of insurers and reinsurers in the United States, Canada, the United Kingdom and worldwide of any interactive rating organization.
www.ambest.com

The Nonprofits' Insurance Alliance of California (NIAC) is a liability insurance pool which was established in 1989 exclusively for 501(c)(3) tax-exempt nonprofit organizations in California. NIAC provides a stable source of reasonably priced liability insurance coverages tailored to the specialized needs of the nonprofit sector. NIAC also assists these organizations to develop and implement effective loss control and risk management programs.
www.niac.org

LINKS

State Insurance Regulators
www.ambest.com/directory/govdir.html

Nonprofitexpert provides a list of publications available for purchase on various nonprofit insurance topics.
www.nonprofitexpert.com/insurance_needs.htm

LET RIVER NETWORK HELP YOU KEEP YOUR HEAD ABOVE WATER.

Join the River Network Partnership and connect to the information and resources you need to stay afloat!

- **Access our River Source Information Center with the 1-800 hotline:** Let us help you research a particular issue and put you in touch with the necessary contacts and resources through one-on-one consultations.
- **Log onto our Partner-only website:** Browse the updated postings of funding sources, upcoming events and trainings, and download river clipart.
- **Receive the myriad of Partner benefits**, including subscriptions to *River Voices* and *River Fundraising Alert*, a copy of the *Directory of Funding Sources for River and Watershed Conservation Organizations*, and a copy of either *Starting Up: A Handbook for New River and Watershed Organizations* or *How to Save a River*…and more!

www.rivernetwork.org

SIGN ME UP!

Annual Partner Dues are only $100

❑ Organizational Partner ❑ Agency/Tribal Partner ❑ Individual Partner

Name ______________________________ Phone ( ) ________________

Org/Agency ______________________________ E-mail ________________

Address ____

City ______________________________ State __________ Zip __________

❑ My check is enclosed

Please charge my credit card: ❑ VISA ❑ MasterCard

Card# ______________________________ Exp. Date ________

Signature/Name on card: ______________________________

You will receive your initial set of Partner materials, including your choice of: (check one)

❑ ***How to Save a River*** ❑ ***Starting Up: A Handbook for New River and Watershed Organizations***
❑ ***River Talk!*** ❑ ***Listening to Watersheds*** ❑ ***Testing the Waters***

Please make your check payable to River Network and return this form to:

River Network, 520 SW 6th Ave., Suite 1130, Ptld., OR 97204-1511 Phone: 503/241-3506

River Network works to support you and your needs. We provide training and technical assistance to our Partner groups. River Network does not promote legislation or represent your organization in legal matters.

River Network
Connecting People, Saving Rivers
520 SW Sixth Avenue, Suite 1130
Portland, Oregon 97204-1511

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River Network Partnership

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Visit the Webpage Exclusively for River Network Partners!

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Enjoy back issues of all past *River Voices* and *River Fundraising Alerts.*

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Forgot your password? Interested in contributing a resource?
Contact Katherine Luscher at: kluscher@rivernetwork.org.