

## What to Look for When Evaluating Directors and Officers Policies

Features will vary depending on the insurance company and the forms used for the policy.

- Carrier's duty to defend, with first-dollar defense.
- Defense costs within the policy liability limits.
- \$1,000,000 additional defense costs outside the limit of liability.
- No personal injury exclusion.
- Defense costs for suits seeking non-monetary damages.
- 'Wrongful Act' (should be broadly defined).
- Infringement of copyright or trademark or unauthorized use of title (not to be excluded).
- Plagiarism or misappropriation of ideas.
- No third-party publishing exclusion.
- Employment practices coverage.
- Marital estate coverage (defends a spouse's assets in a claim against an insured).
- Severability of warranty protects innocent individuals from denial of coverage based on another insured's misrepresentation, self-dealing, or dishonest acts .
- Coverage while serving as a director or trustee of any other not-for-profit entity at the insured's express written direction.

### Who Is Insured:

The non-profit entity, any non-profit and/ or for-profit subsidiaries in existence at policy inception, any past, present or future directors, officers, trustees, employees, volunteers, and/ or any member of the staff, faculty or any duly constituted committee of the Insured. Entity.

# McDaniel Insurance Services



206 N Signal St., Suite O  
P.O. Box 1294  
Ojai, CA 93024

Phone: 805-646-9948  
800-400-7288  
Fax: 805-646-9976  
E-mail: mcins@west.net

CA DOI #0820481

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## McDaniel Insurance Services

## Directors and Officers Liability Coverage for Nonprofit Organizations

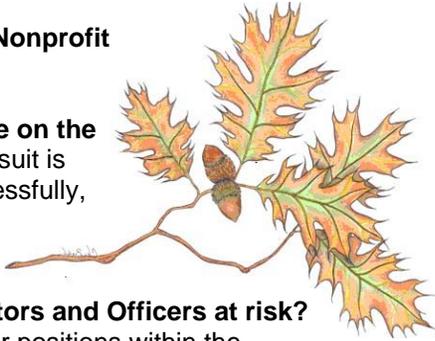
*Provide your Directors,  
Officers and Volunteers  
with the protection they  
deserve!*



**Providing the finest service  
for nonprofits statewide.**

# WHY DIRECTORS AND OFFICERS INSURANCE?

**Suits against Nonprofit Directors and Organizations themselves are on the rise.** Even if a suit is defended successfully, litigation is very expensive.



## Why are Directors and Officers at risk?

By virtue of their positions within the nonprofit corporation, Directors and Officers are legally obligated to perform the duties of *due diligence*, *obedience*, and *loyalty*. Failure to perform one's duties through wrongful acts or negligence can be cause for suit. It is not uncommon for suits alleging wrongful acts to be groundless and/or opportunistic.

## What is the risk?

Directors and Officers may be held personally liable not only for their own acts and obligations but for those of the organization. The organization may also be sued, putting its assets at risk. This could destroy an organization. Directors and Officers can further be held liable for putting the organization at risk.

## Won't the General Liability protect us?

General Liability provides coverage primarily for bodily injury and property damage actually due to an occurrence (as defined by the General Liability policy). Only Directors and Officers Liability provides coverage for "Wrongful Acts." The policy typically defines this as "any actual or alleged error, omission, misstatement, misleading statement, or "breach of duty." (Policy definitions vary.)

## Who can put in claims and for what?

- Members and Volunteers can submit claims for denied opportunities, denied non-monetary compensation, hostile work environment, discrimination, harassment, etc. These are similar to the employment-related suits that are at an all-time high. (If, for example, a member has a professional or prestige interest in membership and is denied a position because of complaints of improper conduct, the organization can find itself in a sticky position.)
- Employees may make claims for the same reasons that they make claims against for-profit companies. Employment Practices Liability coverage is available through the D&O policy.
- Board members who are displeased with the allocation of funds or with policy decisions.
- Donors who feel that their funds have not been used in the manner intended.
- Beneficiaries of services who feel that they were not appropriately dealt with.
- Individuals or corporations who feel they have been financially harmed by the policies or actions of the organization.
- State Attorneys General who feel there has been a mismanagement of funds or other wrongdoing or conflict of interest.
- Suits to limit public comment, such as SLAPP suits (Strategic Lawsuits Against Public Participation) which may result in substantial costs for organizations which take a stand on public-policy issues.

## Legal Climate

Recent Legislation, such as the Sarbanes-Oxley Act, requires higher standards of accounting and transparency. While this legislation may be directed primarily at public corporations, a higher bar has been set for all organizations. These standards may be more difficult for nonprofits to adhere to because they are often understaffed or staffed by volunteers.

## Won't the Volunteer Protection Act of 1997 provide protection?

Although it provides some limited protection for volunteers, there is no protection provided for the organization (the nonprofit corporate entity). Lack of clarity in some of the wording may require litigation.

Although due diligence requirements may be reduced if a duty is not required or appropriate, or deemed within the "scope of responsibilities," it may be unclear how these terms are applied in practice. In addition, liability may be greater for clearly-required duties which are not performed. Suits solely against volunteers performing services for an organization are often dismissed, but volunteers may be named in a suit and this can result in substantial liability exposure. Most importantly, legal costs remain a concern.

**Defense costs** average \$115,000 to \$150,000 for nonprofit organizations. Even in cases where the claimant dropped the claim, costs averaged \$19,000.