

1) What do I need to know about risk management and insurance?

There is liability in operating any nonprofit organization. Opportunities for liability can range from activities in which volunteers are engaged, to actions by the board of directors, to client/customer reactions to services...and many more. So the first issue is that of managing risk so as to minimize potential loss.

Bruce Hopkins, a noted nonprofit attorney and author, addresses risk management from a legal perspective with “The Four I’s”¹: Indemnification, Insurance, Immunity, and Incorporation

Indemnification is usually provided for in bylaws where the organization agrees to pay the judgments and related expenses for those covered by the indemnity should these expenses result from a misdeed by those persons while in service to the organization.

Insurance shifts the risk of liability to an independent third party – the insurance company. However, risk from certain acts such as criminal acts, libel and slander, employee discrimination and antitrust matters is usually excluded from insurance protection.

Immunity is provided by laws that protect persons while acting in specific capacities. In Arizona, a volunteer is immune from civil liability in any action based on an act or omission resulting in damage or injury if the volunteer acted in good faith and within the scope of the volunteer's official functions and duties for a nonprofit corporation or nonprofit organization, hospital or governmental entity and the damage or injury was not caused by willful, wanton or grossly negligent misconduct by the volunteer.²

Incorporation is a primary line of defense in that this generally protects officers and directors from personal liability. “A corporation is a separate legal entity. Liability is generally confined to the organization and does not normally extend to those who manage it.”³ However, this protection does not extend to fraudulent or illegal actions on the part of individuals. Nor does this protect the organization from being the subject of a lawsuit.

There are several organizations dedicated to the research and reporting of risk management concerns. Although there are others, we encourage you to

¹ Hopkins, Bruce, Starting and Managing a Nonprofit Organization: A Legal Guide. 3rd ed., John Wiley & Sons, Inc. 2001

² 12-982. Qualified immunity; insurance coverage. <http://www.azleg.state.az.us/ars/12/00982.htm>

³ *ibid*

ASK THE NONPROFIT SPECIALIST – RISK MANAGEMENT AND INSURANCE

reference the links below to begin your search for what is appropriate for your nonprofit:

The Nonprofit Risk Management Center (www.nonprofitrisk.org) offers risk management information and tools. It also provides a program to help you “evaluate your risks, safeguard your assets, and protect clients and staff from harm.”⁴ This nine-module program addresses employment practices, technology, contracts, internal controls and other basic matters. It is free to use, but a modest fee is charged to print out the report with specific recommendations.

The Public Entity Risk Institute (www.riskinstitute.org) serves the risk management needs of local governments, small business, and small nonprofit entities. It offers numerous helpful articles on topics such as what happens in times of natural disasters, and risk identification and analysis for small organizations.

The Management Assistance Program for Nonprofits (www.mapnp.org/library/risk_mng/) has posted a very complete series by Carter McNamara, Ph.D. that covers a broad spectrum of topics ranging from the definition of risk management to risk management assessment, to the management of risk in finances, volunteers, and fund raising. These are printable, short, easy to read and are excellent materials for the orientation of board members and staff to the topic of risk management.

2) How do I know what kind of insurances should our nonprofit carry?

Primary protection emanates from good management, personnel policies, and the regular assessment of your risks, a regularly updated risk management plan, and organizational policies and insurance coverages that address the needs identified by these processes. These processes will help you identify what types of insurance you need; among them may be Directors and Officers’ Insurance (D & O) Property, Office Contents, Automobile, Business Interruption, Financial Bonds, Workers’ Compensation Insurance – and any number of others.

3) Do we really need to have insurance and is it expensive?

Insurance premiums can be expensive. Loss from not having this protection can be even more expensive. Thus, it is prudent business management to assure an appropriate level of coverage and to budget for the costs as part of the annual operations of the organization.

⁴ Nonprofit Risk Management Center, CARES program. www.nonprofitrisk.org/cares

4) How do I find insurance providers?

Most insurance brokers in any community can provide you information about various insurance companies that provide coverage for nonprofit organizations. A valuable exercise is to include a selected broker in the analysis of the assessment of your risks and the development of your risk management plan. It is also advisable to ask an attorney who practices nonprofit law to review these; there can be gaps about which you may not be aware.

The following websites provide information about organizations that offer insurance developed for nonprofit organizations. Although neither organization currently writes insurance in Arizona, the sites provide very helpful information as you search for your own provider.

The Alliance of Nonprofits for Insurance, Risk Retention Group (ANI-RRG) (www.ani-rrg.org) 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. Although not currently writing insurance in Arizona, its website includes information of significance to those seeking to purchase it.

CANPO ASI (<http://www.canpoasi.org>) is a provider of nonprofit insurance in Colorado. This website provides a full listing of the types of insurance nonprofit organizations may wish to consider.

5) Can boards of directors be sued?

Yes, boards of directors can be sued. Provided the actions that generated the suit are not found to be criminal acts, libel and slander, employee discrimination and antitrust matters (these are usually excluded from insurance protection) directors and officers liability insurance provides legal representation including related costs.

6) How does Directors and Officers Insurance (D & O) protect them?

Individual members of a board and individual officers of the corporation may also be sued. Those who serve as directors or officers of a nonprofit might also consider additional liability coverage for their own personal protection. These policies can be add-ons to homeowner and tenant insurance, are usually modest in price, and can offer additional financial protection.

(Resources continued on next page)

Resource List:

Education, Training & Assistance:

Center for Nonprofit Leadership and Management at ASU –
<http://nonprofit.asu.edu>

Nonprofit Management Institute –

http://www.asu.edu/copp/nonprofit/edu/nmi_front.htm

Fifteen courses, 10–20 hours each, on topics of importance to nonprofit leadership and management; can lead to the Certificate in Nonprofit Management. Several of the courses cover risk management.

Publications:

Coverage, Claims, and Consequences: An Insurance Handbook for Nonprofits.
Nonprofit Risk Management Center, 2002.

<http://www.nonprofitrisk.org/pubs/coverage.htm>

Hopkins, Bruce, Starting and Managing a Nonprofit Organization: A Legal Guide,
3rd ed., Wiley Nonprofit Series, John Wiley & Sons.

Web Sites:

The Alliance of Nonprofits for Insurance, Risk Retention Group (ANI-RRG) -
www.ani-rrg.org

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.

Arizona State Legislature, ARS 12-982 -

www.azleg.state.az.us/ars/12/00982.htm

Gives the wording for state law 12-982.

CANPO ASI - www.canpoasi.org

CANPO (Colorado Association of Nonprofit Organizations) ASI is a provider of nonprofit insurance in Colorado. This web site provides a full listing of the types of insurance nonprofit organizations may wish to consider.

Carter McNamara's Risk Management Site -

www.mapnp.org/library/risk_mng/risk_mng.htm

Arizona State University Center for Nonprofit Leadership and Management

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Carter McNamara has authored several very useful writings on risk management that are located on this site.

Don Kramer's Nonprofit Issues - www.nonprofitissues.org

Provides an excellent list, with links, of organizations offering information about how to assess and plan for risk management.

The National Service-Learning Clearinghouse - www.servicelearning.org

The National Service-Learning Clearinghouse is part of the Corporation for National and Community Service. A search of the site for "risk management" locates several very helpful articles.

The Nonprofit Risk Management Center - www.nonprofitrisk.org

This site offers risk management information and tools. It also provides a program to help you "evaluate your risks, safeguard your assets, and protect clients and staff from harm." This nine module program addresses employment practices, technology, contracts, internal controls and other basic matters. It is free to use, but a modest fee is charged to print out the report with specific recommendations.

Public Entity Risk Institute - www.riskinstitute.org

Offers multiple resources on risk management, especially for small organizations -- both nonprofit and public.