

Liability of Non Profit Organization Boards, Volunteers, Employees

Volunteer board members are to be commended for their willingness to serve on the Board of Directors (Board) of a non-profit organization (NPO). However, board members and volunteers need to be aware that this service does not come without risk.

Since a NPO does not have owners or shareholders, the rights, responsibilities and liabilities are vested in the Board. Being a 501(c) (3) does not increase or lessen these rights, responsibilities and liabilities.

"I'm just a volunteer on a NPO Board. What can happen?"

A lot can happen, especially if the NPO has employees. Some of the risks include claims relating to employment laws, negligent hiring and firing; contract claims such as failure to make lease payments or pay suppliers; tort claims like slips-and-falls, injuries incurred by others; government actions such as failure to pay taxes, wage claims, or violations of state or federal statutes; or criminal activity like embezzlement or theft.

"So, how can I limit my liability?" An NPO should use several of these risk management tools to limit liability.

Immunity The federal Volunteer Protection Act of 1997 and Colorado statute shield individuals from personal liability under certain circumstances as a NPO volunteer. However, the act only provides protection to the individual volunteer, not the NPO or its board as a whole.

A civil case where the NPO and all board members are individually listed as defendants may take advantage of the statutory immunity provisions to get the individual members summarily dismissed from the petition, thereby allowing the case to go forward against the NPO itself.

Indemnification - Colorado law, C.R.S. 7-129-101, provides for indemnification of directors, officers, employees, fiduciaries, volunteers and other agents of the NPO. Indemnification provisions are typically included in either the articles or the bylaws of the NPO. Although indemnification provisions may provide some relief, it is strongly recommended that they not be relied on exclusively to provide protection.

Insurance - In general, for individual board members, insurance provides legal defense costs to establish

immunities to get them dismissed from a cause of action; and for NPOs, insurance provides legal defense and damage compensation.

CGL & D&O - There are many types of insurance, but the most common for NPOs are comprehensive general liability (CGL) and directors and officers (D&O) liability insurance. CGL provides coverage for bodily injury or property damage liability; and D&O provides coverage for allegations of financial malfeasance.

Because of adverse court actions, these policies are usually endorsed with both employment practices liability (EPL) coverage and fiduciary coverage. Mid-2000 industry statistics showed that the majority of claims against NPOs were under the EPL category.

Colorado Counties Casualty & Property Pool (CAPP)

CAPP provides coverage for those individuals who are appointed by the member county Board of County Commissioners to serve on their county boards. If an individual is appointed to serve on a non-county NPO, limited CAPP coverage may apply for the individual, but no coverage is afforded the NPO, its board or employees.

Some NPOs can be approved as a sponsored entity in accordance with the pool policy statements. However, unless the NPO has a written statement that the pool is providing insurance coverage, the NPO should carry coverage to protect its board members, employees and volunteers.

Information - Knowledge is power. Understand the NPO, its activities, its operations and finances. Do not be afraid to ask questions. Do not just robotically authorize agenda items. When the NPO board shows that it acted on an informed basis and in good faith, a "business judgment defense" is available and the board might not be liable if they act prudently.

What This Means For Counties

Share this information with individuals who participate in NPOs so they are aware of the risk of personal liability. For more information, contact CTSI at 303-861-0507.