

RISK MANAGEMENT AND INSURANCE

Risks Vary for Each Nonprofit

- ❑ Public charities are all 501(c)(3) but have various missions.
- ❑ Each mission carries significant risks and innocuous risks.
- ❑ Amount of risk depends upon:
 - Scale of operation: revenue, assets, staff.
 - Town, City, State, Multi-state, International.
- ❑ Your particular mission, size and location = your risk = your insurance need.

Definition of Risk Management

- Risk management is the process of:
 - Identifying risk – a constantly moving target – and how that risk can cause liability or other problems;
 - Taking steps to mitigate that risk so that it is less likely that a bad event will happen; and
 - Then transferring the risk that remains as much as possible to insurance companies.

Example We Will Use

- ☐ Your nonprofit operates an after-school program. Your mission is to provide a safe and secure environment for at-risk children and to enrich their lives by offering opportunities for learning and mentoring by adults.
- ☐ Children attend five days a week during the school year.
- ☐ You provide the children with a snack.
- ☐ The children work one-on-one with volunteers who tutor them and assist them with their homework.
- ☐ The children then have 60 minutes of structured play and have access to the computer lab.

Digression: Lawsuits 101

- ❑ You can be sued in a civil action for basically one of three things:
 1. Contract: breaching an agreement, written or verbal, causing financial damage.
 2. Tort: breaching a duty you owe to someone else, causing personal injury, property damage, or certain business injuries.
 3. Administrative: violating a statute or regulation, resulting in a fine or penalty.

People Who Can Sue You

- ☐ Your program participants
- ☐ Your guests and invitees
- ☐ Your employees and volunteers
- ☐ Anyone with whom you contract or agree
- ☐ Your funders and banks
- ☐ Anyone to whom you owe a duty of any kind
- ☐ Your government!
- ☐ Your friends!
- ☐ Almost anyone!

Assess the Risk - What Could Possibly Go Wrong

- ❑ A child is injured will at your facility.
 - Play equipment not safe.
 - Inadequate supervision.
 - Another child who is violent was not disciplined.
- ❑ A child contracts an illness while at your facility.
 - Vaccination records are not properly maintained.
 - Sick children or staff are not sent home.
 - Food safety not observed.
- ❑ A child is a victim of sexual abuse.
 - Employees and volunteers are not properly screened.
 - Proper procedures are not followed.
 - Building not secure and intruder enters.

STEP ONE . . .Identify Risks

<i>Specific Risk</i>	<i>Mitigation</i>	<i>Insurance</i>
1. Child hurt playing with equipment		
2. A child is a victim of sexual abuse		
3. Child become ill from food poisoning		

STEP TWO: Mitigate the Risk

- ☐ Once risks are assessed, they can be mitigated...
- ☐ Create a safe workplace.
- ☐ Attend to any other safety issues.
- ☐ Put controls in place – regular training – you & employees.
- ☐ Take courses – you & employees.
- ☐ Put policies in place – such as how to protect confidential information.
- ☐ Background checks.
- ☐ Address issues promptly.

STEP TWO: Mitigate Risk

- ☐ Liability waivers/releases:
 - Get a model & use one.
 - Sometimes enforceable, sometimes not (NY, NJ, GA, DC CT and MD yes – VA no).
- ☐ Get indemnifications from others.
- ☐ Employee/Policy Manual.
- ☐ Attend trainings.
- ☐ Consider each policy (conflict of interest, whistleblower, financial oversight) -- think of these as risk mitigation tools for nonprofit.

STEP TWO . . .

<i>Specific Risk</i>	<i>Mitigation</i>	<i>Insurance</i>
1. Child hurt playing with equipment	Equipment checked for safety. Staff trained in first aid	
2. A child is a victim of sexual abuse	Employees & Volunteers screened and activities monitored	
3. Child become ill from food poisoning	Food safety measures followed	

STEP THREE: Insure the Risk

- ❑ Some risk will remain no matter what.
- ❑ Accidents, fires, carelessness of *others*...
- ❑ Insurance is the *transfer* of risk from you to an insurer.
- ❑ For a price, an insurer will take your risk.
- ❑ Leaving you nearly (*but never entirely*) risk-free.

Insurance Policies 101

- ❑ Property policies – “first-party” insurance. Policies can cover both building and contents.
- ❑ Liability policies – “third-party” insurance.
 - Commercial General Liability or “CGL” insurance
- ❑ Auto policies – a mixture of both.
- ❑ Workers Compensation – MANDATORY coverage.

Property Policies

- ☐ Covers “physical loss or damage” to property.
- ☐ Covers resulting business interruption.
- ☐ Generally covers third-party theft.
- ☐ May provide for employee theft.
- ☐ Water damage commonly excluded – flooding, burst pipes, etc.
- ☐ Other common exclusions: mold, asbestos, lead paint, terrorism, pollution, boats, more.
- ☐ Read a policy in light of *your own risk*.

Workers Compensation

- ❑ Each state sets number of employees that trigger requirement to buy workers comp. In CT, DC, MD, NJ and NY one employee triggers need for workers comp. GA and VA – three.
- ❑ You *want* to have this insurance – it limits liability to nonprofit because employee cannot sue nonprofit otherwise. Worker's Comp is an exclusive remedy.
- ❑ Covers any injury to an employee in the “course of employment” – this term is broadly construed.
- ❑ Must promptly notify worker's compensation board and/ or carrier if there is an injury.
- ❑ Beware of wrongly calling an employee an “independent contractor” – if a worker is an employee, worker must be covered.

Commercial General Liability (CGL) Policies

- ❑ Policy covers claims for “bodily Injury.”
 - “bodily injury, sickness or disease” including accompanying emotional distress.
- ❑ Also covers other “personal injury”
 - false arrest, false imprisonment;
 - malicious prosecution;
 - wrongful entry or eviction, invasion of right of private occupancy; and
 - invasion of privacy; and slander, libel, and disparagement.

CGL Policies

- ❑ Many policies have endorsements.
- ❑ An endorsement amends the terms of the policy.
- ❑ Read them closely.
- ❑ Consider a “Non-Owned & Hire Auto” endorsement to cover nonprofit in case someone working or volunteering for nonprofit is in accident while driving personal vehicle.
- ❑ If maintain sensitive data, consider cyber liability policy.

CGL Policies – Insurer Duties

- ❑ See if your policy has a duty to defend – With a duty to defend the insurance carrier must provide lawyers to defend the nonprofit. Nonprofit does not have to pay up-front legal costs and be reimbursed at the end.
- ❑ Duty to defend applies if:
 - There is any possibility of coverage.
 - There are both covered and uncovered claims.
- ❑ Generally, defense costs are outside of policy limits, but need to check your policy.
- ❑ Duty to indemnify – duty to pay any valid claims in accordance with provisions of the policy.

Directors and Officers Insurance

- ❑ Directors & Officers coverage (D & O) insures against claims of negligence when carry out fiduciary duties as officers and directors.
- ❑ Also covers claims of discrimination in providing benefits.
- ❑ In nonprofit context, usually covers nonprofit, officers, directors, employees and volunteers.

Other Liability Policies

- ❑ Business automobile.
- ❑ Errors & Omissions – covers mistakes made when professionals provide services. (a.k.a. malpractice coverage.)
- ❑ Employment Practices Liability or EPL coverage. (Covers claims of employment discrimination - may be included in D & O policy.)
- ❑ Sexual Molestation. (May not be covered by CGL.)
- ❑ Accidental Medical Insurance – pays uninsured medical expenses, up to policy limits to:
 - Volunteers and clients.
 - Claims paid on no-fault basis.

STEP THREE . . .

<i>Specific Risk</i>	<i>Mitigation</i>	<i>Insurance</i>
1. Child hurt playing with equipment	Equipment regularly checked	General Liability Insurance
2. A child is sexually abused	Workers screened & monitored	GL Insurance – check to ensure not excluded
3. Child & employee are ill from food poisoning	Food safety measures followed	General Liability Insurance & worker's compensation

In Case of Serious Incident

- ☐ Contact broker immediately to report the claim.
- ☐ A failure to report claim promptly may result in a loss of coverage.
- ☐ Do not admit liability or commit to make any payments.
- ☐ Offer medical attention as warranted and if possible, have injured party complete an “incident report.”
- ☐ Inspect area or condition and note any defects or contributing factors.

In Case of Serious Incident

- ☐ Take photos or video of the area/condition as soon as possible, document the date, time, name of person taking photos and retain for your records.
- ☐ Retain any evidence relevant to the incident. Immediately tag and store in a protected place until contact is made with your insurance adjuster.
- ☐ Identify witnesses and if possible have them complete a witness form – even if they did not see the incident occur.
- ☐ Keep copies of your insurance policies permanently.