

Director's & Officer's Liability - Frequently Asked Questions

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Q I have been told that liability insurance for clubs covers directors. Why then is Director's & Officer's coverage discussed so much and sold separately? What is this all about?

A Commercial General Liability policies respond to law suits which result from a bodily injury or a property damage in which it is felt the club bears some responsibility. Your policy covers this and also covers directors and others associated with hosting club activities for these types of claims. However there are other things for which a director or officer may be sued which have nothing to do with a bodily injury or a property damage. Typically these law suits are the result of a wrongful act by a director and are filed by another director, club member or a financial institution. Director's and Officer's Liability coverage deals with these situations.

Q What is a wrongful act?

A It is an actual or alleged negligent act, error, omission, misstatement, misleading statement, neglect or breach of duty by the Directors and Officers, individually or collectively, in the discharge of their legal duties solely in their capacity as Directors and Officers of the society.

Q Why buy D&O Liability insurance?

A The purpose of a D&O liability insurance policy is to provide coverage for damages, judgments, costs and defense of legal actions, claims or proceedings. The coverage provides the following protection:

1. Protection of personal assets, as well as spouse's,
2. Defense regardless of whether or not allegations are true
3. Resources for defending the claim
4. Reduction in reliance on the society:

Bylaws contain indemnification provisions to protect the Directors & Officers. Despite these provisions, circumstances could exist where indemnification may not occur (the society is financially impaired, becomes insolvent or is not capable of providing funds for defense or resulting damages).

Q What are my legal responsibilities under the law?

A Under the law, Directors & Officers must (1) act in good faith and in the best interest of the society (2) act with a duty of care as a reasonably prudent person (3) perform duties in accordance with applicable statutes and your own charter.

Q Under what statutes can a director or officer be liable under?

A The following are Federal and Provincial Statutes a Director or Officer can be liable under:

- 1) Income Tax Act
- 2) Employment Standards Act
- 3) Bankruptcy Act
- 4) Pension Benefits Act
- 5) Competitions Act
- 6) Unemployment Insurance Act
- 7) Discrimination Act
- 8) and more

Q What are some examples of claims?

A

1. Negligence of account procedures and mishandling of funds;
2. Personal benefit by a Director;
3. Jeopardizing tax-exempt status;
4. Interest that should have been collected and distributed;
5. Failure to adopt and implement appropriate safety and operational procedures at a facility causing the facility to be shut down by regulators.

Q Our club is interested in Directors & Officers Liability insurance to protect our directors. This coverage is an option on the insurance program and we are wondering about the need and the expense.

A The protection provided to directors under most Society Acts has weakened over the past few years as cases are tested in the courts. We are able to arrange Director's & Officer's liability insurance for your club. Often directors are reluctant to vote for the expense of buying this coverage for the board because they feel it may be considered somewhat selfish. The members of a club on the other hand should support this purchase and protect the people who freely offer their time to the running of club affairs.

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