RISK ASSESSMENT CONCERNS FOR NONPROFIT BOARDS & STAFF DURING COVID

Presented By:
Discussion Overview

1) Review of Insurance and Risk Management Process for all organizations

2) Review of Insurance Program Structure for a Non Profit

3) Discussion of COVID 19 issues and Insurance / Risk Management

4) Legal Risk Management Concerns and Mechanisms.
Specific Topics

• Working from home
• Employee use of personal auto
• Cybersecurity
• Volunteers
• Reopening
• Subletting
• Crime

• Legal duties of directors and officers
• Personnel management/human resources
• Collaborations
• Mergers & Acquisitions
1) Analyze Exposures

2) Consider Coverage

3) Consider Risk Mgt.

4) Implement

5) Review Periodically

Know The Rules

Rule 1: Insurance carriers are in business to make money, not pay claims.

Rule 2: After a loss, insurance carriers will always do the right thing...for themselves...make money.

Rule 3: Other than the law or lender requirements; there is no right or wrong. It is a matter of risk tolerance.

Rule 4: Insurance is name and location specific.

Rule 5: Pay attention to the correspondence and fine print.

Rule 6: We are not in control, a jury is.

Rule 7: An insurance program is only as good as the time & effort put into it...Otherwise it is a guess.
Organizational Basics

- Package
  - Contents
  - On Site
  - Off Site
- General Liability
- Auto Non Owned and Hired
- Workers Compensation & Employers Liability
Non-Profit Basics

- Directors & Officer / Wrongful Management
- Cyber
- Employment Practices Liability Insurance
- Crime
- Fiduciary
- Volunteer Accident
- Errors & Omissions
Employee Benefit Basics

- Group Health
- Group Dental
- Group Life
- Group Disability
Organizational Basics

- Excess / Umbrella
- Package Contents
  - On Site
  - Off Site
- General Liability

Employee Benefit Basics

- Group Health & Dental
- Workers Compensation & Employers Liability
- Auto Non Owned and Hired

Non Profit with Employees Basics

- Directors & Officer / Wrongful Management
- Cyber
- EPLI
- Crime
- Fiduciary
- Volunteer Accident
- E&O
Issue: Employees Working From Home

TO DO:

• Property offsite at employees homes?

• Consider adding employee home location to property policy or adding Inland Marine coverage for property (including Computer Equipment).
Issue: Employees Working From Home

TO DO:

• Suggest employees discuss need for “Permitted Incidental Occupancy” coverage with their personal insurance agent.

• Have Employees complete a questionnaire for Cyber Security
Issue: Employees Working From Home

TO DO: If employees live out of state, add the state to the Workers Compensation policy coverage A.
Issue: Employees Using Personal Autos

TO DO:

• Communicate with Employees that they are responsible for damage to their vehicles and their personal liability.

• Suggest Employees discuss need to Business Class 30 with their personal broker.
Issue: Cybersecurity

TO DO:

• If Cyber *is not* in place, consider obtaining coverage.
• If Cyber *is* in place, review coverage for what & whose computer equipment is included.
• Consider hiring a Security Consultant for
  • Gap Analysis
  • Creation of a WISP
  • Creation of a Recovery Plan
TO DO:

• Consider obtaining Volunteer Accident program. Approx. $300 per year. (Personal Group Health Deductible / CoPays)

• Waivers!
Issue: Directors & Officers / Wrongful Management

TO DO: If coverage not in place, consider obtaining.
TO DO:
Consider working with a HR consultant to make sure laws being followed on local, state and Federal level.
Issue: Reopening the Office

TO DO:
• Working HR consultant to make sure local laws being followed.
• Establish a COVID Protocol for the Office
Issue: Subletting Your Offices

TO DO:

• Review Lease to see if this is allowed.
• Discuss with your insurance agent to add Lessor Risk classification
• Create Lease to protect your organization and transfer risk.
Issue: Closing Your Office

TO DO:
• Discuss with your insurance agent to eliminate location
• Review Vacancy Clause with agent
TO DO: If not in place, consider obtaining and coordinating with the Cyber program.
Issue: Information Resources

TO DO:
Ask your insurance broker to invite you to carrier and law firm webinars.

Consider annual distribution of the MA AG’s Guide for Board Members of Charitable Organizations
Issue: Collaboration

Hypo: Online collaboration—group of performers coming together to bring their performances online.

- What are the agreements between the parties?
- Who bears liability? (Who’s insured?)
- Who retains ownership (intellectual property)?
- Are there power disparities between the collaborators?
- How will everyone communicate?

Collaborations take extra time and resources.
**Issue:**

Mergers & Acquisitions

Full M&A workshop on March 23!

The **ultimate** collaboration (collaboration x10).

Different flavors:
- Absorption
- Merger

Dissolution is also an option.

Mergers *do* require a business audit:
- Governing documents (articles & bylaws)
- Finance
- Insurance
- Strategic planning
- Implementation
- Human resources
- Legal/Compliance
Liability Protections in the Law

• Massachusetts Charitable Immunity Law – *M.G.L. ch. 231, sec. 85K*

• Protections for Volunteers
  • **MA**: Immunity from acts solely relating to performance of duties as an officer, director or trustee of a nonprofit charitable organization – *M.G.L. ch. 231, sec. 85W*
  • **Federal**: Liability shield who work without pay and cause harm while acting in the scope of their volunteer activities – *Volunteer Protection Act, 42 USC 139*

• Limitation on liability from corporate form

• Indemnification of officers, directors and agents
Helpful Legal Resources

• Massachusetts Attorney General Guide for Board Members

• Massachusetts Department of Revenue Guide on Remote Work

• Guidance on Charitable Property Tax Exemption
  https://www.mass.gov/doc/religious-and-charitable-organizations/download#:~:text=Real%20estate%20bought%20by%20a,until%20it%20is%20so%20used
Applying for VLA Legal Services

You can now apply for legal services directly through our website!

1. Visit https://artsandbusinesscouncil.org/apply-for-services and select “Apply Now”

2. Complete the application. Please include: your contact information, a brief explanation of your legal issue, and the names of any other related or involved parties.

3. For *pro bono* legal services, please also complete the financial information, **including proof of organizational income** (990, profit & loss statement, balance sheet, etc.)

4. Submit!

We’re continuing to waive VLA service fees for organizations and individuals financially impacted by COVID-19!
Contact Us!

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