

## ***Directors and Officers Insurance Policies – A Checklist***

***Disclaimer:*** This document is not intended as legal advice. Your organizational goals, purpose, bylaws, and values should drive the creation of this document.

Insurance policies can cover matters that cannot be indemnified under state law, or in instances where the corporation lacks the financial resources to pay for indemnification. Most state corporation statutes allow corporations to purchase insurance to cover matters resulting from acts taken by officers and directors. Directors and officers insurance (D&O) is separate from, and in addition to, the general liability insurance you purchase for your corporation. The organization generally purchases it and covers all board members.

It's always a good idea to speak directly with an insurance broker regarding the insurance needs and requirements of your organization. When you decide that you require D&O insurance, the following key issues must be reviewed in light of the terms and conditions of a D&O policy.

- What is the level of board involvement in the day-to-day operations of the organization?
- What is the dollar amount of the coverage that is sufficient for your organization?
- Is the insurer offering the policy financially strong?
- Is the policy cost competitive?
- How large is the deductible offered?
- Does the policy cover all directors and officers, or do they have to be specifically named?
- Does the policy cover the corporate entity?
- Does the policy pay legal fees?
- Does the insurer advance the costs of legal fees or merely reimburse for out-of-pocket costs?
- How quickly must claims be made?
- What are the exclusions of the policy?
- Are the exclusions from coverage too broad?
- Are there special endorsements that may be appropriate?

Liability can exist for officers and directors when they cause financial harm to the corporation by breach of a duty, by acting solely on their own behalf, or by acting to the detriment of the corporation. Committing a crime or wrongful act may also harm the organization. Intentional acts may or may not be covered by D&O policies. Certain acts may subject an officer or director to personal liability. Other acts, although they would otherwise subject them to liability, may be either indemnified by or insured against by the corporation. Discussion with your directors should be considered regarding personal umbrella insurance as a potential alternative or supplement to the organization's D&O coverage.