

INSURANCE MAY BE

GREEK TO YOU

IT'S

not to us

DIRECTORS & OFFICERS LIABILITY COVERAGE

WHAT YOU NEED TO KNOW

Directors & Officers Liability coverage protects fraternal organizations as well as their Directors and Officers against claims and suits brought by 3rd parties who allege they sustained harm as a result of the failure of the organization and/or Director and Officer carrying out the fiduciary responsibilities of their position.

MAJOR AREAS OF EXPOSURE INCLUDE:

Employment Practices: Organizations that hire paid employees must follow the same employment laws that apply to for-profit corporations and face significant risk if they don't have well-designed policies and procedures in place.

Fiduciary Duty Breaches: Directors and Officers can be liable for grossly neglectful decisions and wasting resources. They are responsible for three fiduciary responsibilities: Duty of Care, Duty of Loyalty and Duty of Obedience.

Conflict of Interest: Directors and Officers must not use their power for their own interest, or that of another interest or entity.

Government Enforcement Actions: Nonprofits must follow applicable laws, including tax, civil rights and employment laws. Additionally, the state attorney general's office usually monitors nonprofits to ensure they are following their stated mission and goals.

Misuse of Funds: A nonprofit relies on grant funding and donations to operate, but it is important that funds are used for the stated mission and goals. Directors and officers are liable for how funds are used.

EXAMPLES OF DIRECTORS & OFFICER'S CLAIMS AND LAWSUITS INCLUDE:

A prospective member was released by a chapter during the new member period and filed a claim against the Directors and Officers alleging wrongful exclusion from the opportunity to join the organization.

A House Director's contract was not renewed and a claim was filed alleging age discrimination.

A lawsuit is filed by a 3rd party against the National Fraternity alleging a contract entered into with a local chapter was breached resulting in damages to the 3rd party.

A claim was brought by alumnae volunteers alleging financial mismanagement by the National Sorority Board of Directors.

Some organizations believe that D & O insurance is unnecessary due to the Volunteer Protection Act of 1997, which states:

"No volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer acting on behalf of the organization or entity."

However, according to the Act, protection is not provided if the misconduct is a crime of violence, hate, sexual in nature, committed while under the influence of alcohol, or if it is a violation of civil rights, labor, or tax provisions. For example, according to a Watson Wyatt Worldwide Survey Report, 22% of all claims are based on discrimination. As this is a civil rights violation, coverage would not be afforded to the volunteer being sued.

More importantly, should a volunteer be protected under volunteer protection laws, nothing in the law acts as a protection against a claimant seeking a remedy against the entity itself. Currently, most claimants automatically name the entity itself into its suit.

Directors & Officers coverage can save the nonprofit in the event of an expensive claim. Also, D & O insurance can offer protection for board members who would otherwise have to use their own personal assets to prove immunity or pay for defense costs. Potential board members are often reluctant to join a board if a nonprofit does not have D & O insurance. While General Liability insurance policies cover bodily harm and property damage, they do not cover the risks described here.

If you believe a situation has occurred that may result in a D&O Claim, please contact us at Holmes Murphy. We can discuss the claim with you and put the insurance carrier on notice if necessary.

**Rob Meraz, Senior Claims
Consultant**
rmeraz@holmesmurphy.com
(800) 736-4327 ext. 4189

**Mary K Mashek, Claim Service
Consultant**
mmashek@holmesmurphy.com
(800) 736-4327 ext. 5500

If you do not currently have D&O coverage, but would like to explore adding this coverage to your insurance program, please email clientservicerequest@holmesmurphy.com

Other resources are available at www.HolmesMurphyFraternal.com

GLOSSARY OF TERMS

Duty of Care: Directors and officers must exercise reasonable care, actively participate in decision making and are held liable for ordinary negligence. Ignorance is not an excuse.

Duty of loyalty: An officer or director must not use his or her position to pursue outside transactions or interests.

Duty of obedience: Directors and officers must comply with all federal and state reporting requirements, and ensure the nonprofit is dedicated to its stated mission statement and goals.



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Fraternal Practice



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