

Help Your Clients Understand Their Risks Around Being a Director or Officer

By: Steve Tombarelli

Joining the board of a local nonprofit or business is often a rewarding experience, whether it's donating professional skills to an organization to enhance a resume or helping a cause that is near and dear to one's heart. This may be as a trustee or volunteer in the community, raising funds for the local homeless shelter, serving on the board of a condominium association or as a trustee for a private golf course or tennis club.

Some of these organizations explain any contractual obligations before gaining your commitment. A bank, for example, knows full well that its directors and officers must always be protected from the potential risks of running the business. Other organizations may add directors and officers, while not fully explaining the depth of their roles. Regardless, board members or trustees need to know the personal risks associated with these roles.

For independent insurance agents, making sure clients are protected when serving as a director or officer for any organization is a way to increase client loyalty and expand your book of

business. Whether serving in a public, private or nonprofit organization, the time for people to understand the potential liabilities is before any commitment of time and responsibility is made. As directors and officers are fiduciaries of an organization, people in these roles are legally required to act prudently in the best interest of the organization in all situations.

Protecting Individual Clients

Directors and officers (D&O) liability insurance is essential to cover board members and trustees in the event the organization or its leadership is sued as a result of running the business. Independent agents should ask clients to review their organization's insurance policies and discuss additional coverage options with them.

D&O liability "risk exposures have expanded exponentially over the past few years, amid an increasingly complex and interconnected business environment," according to A.M. Best's recent market segment report.

D&O coverage applies to anyone who

serves as a director or an officer of a for-profit business or nonprofit organization. Policies insure against personal losses and also help reimburse a business or nonprofit for the legal fees or other costs incurred in defending such individuals against lawsuits. If anything goes wrong with business operations or if a decision is made by board members that causes angst with constituents, without proper insurance policies to protect the business, each director or officer may be held individually liable for losses beyond their insurance coverage.

There are differences in risk level for a paid trustee versus a volunteer, with higher exposure to risk for a person in a paid trustee position. But there is also significant risk as a volunteer board member if a nonprofit organization is sued, and all directors and officers need to have D&O insurance coverage in place.

Protecting Businesses and Organizations

Independent agents need to know how to determine adequate coverage for cli-

ents and local organizations, which may already have a businessowner policy, commercial auto and basic coverages for incidents on and off its premises. D&O liability coverage is critical in addition to these basic coverages.

Offering the proper level of D&O insurance is based on the size and type of the organization and its activities. Depending on these factors, coverage may range from \$1 million for small organizations to \$10 million for larger corporations. The independent agent should review the business thoroughly, including its sales, assets, management, property ownership and public interaction to adequately protect the business leaders at the correct level.

The D&O policy can provide blanket coverage using the same amount for all board members or add higher coverage for the chairperson, vice chair, secretary and treasurer. Coverage can be custom-

ized based on the needs of the business, desired premium and deductible.

At renewal time, agents should talk in depth with clients about any changes in their business, the scope of their work and what is in the operating plan for the year ahead. Ask how the company's products or services have changed, what is the business makeup and what's happening in their industry/area. If their industry is becoming more litigious, research this to know ahead of insurance renewals what the implications may be.

Safeguarding Personal Assets

Beyond D&O insurance, independent agents can offer clients a personal umbrella policy that covers them above and beyond when serving as a director or officer. This policy protects clients in the event the organization's insurance is insufficient to cover expenses involved in a lawsuit.

For instance, if an organization with a \$10 million blanket policy covering 10 board members is sued for \$20 million and loses in court, a \$1 million personal umbrella policy can cover the additional costs for an individual versus paying for costs out of pocket if the plaintiff wins the case.

As independent agents build their clientele, they can broaden awareness of the need for D&O liability insurance. The demand for its coverage is increasing and this is a trend that will not end soon with COVID-19 still impacting the nation as a whole. Individual and business clients will be grateful to have this advice and coverage in place in the event litigation occurs. ■

Steve Tombarelli is senior vice president, business expansion and innovation at SIAA (Strategic Insurance Agency Alliance Inc.). He can be reached by email at stevet@siaa.net.

Reprinted by permission of Standard Publishing Corp. © 2020.

To subscribe to *The Standard* and stay up-to-date on what's happening in New England insurance, please go to www.spcpub.com or call 617-457-0600.