

Insurance for Congregations

Risk Management & Board Duties



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Note: This is a brief summary of Risk Management for Churches and Schools.

I. D&O Duties – Important for every director & officer*

Directors and officers owe three basic fiduciary duties to the nonprofit organizations they serve: **the duties of obedience, loyalty, and due care.**

1. The **duty of obedience** forbids acts outside the scope of corporate powers. The governing board of the organization must comply with state and federal law, and conform to the organization's charter, articles of incorporation, and bylaws.

2. **The duty of loyalty** dictates that officers and directors must act in good faith and must not allow their personal interests to prevail over the interests of the organization.

3. The **duty of care** requires directors and officers to be diligent and prudent in managing the organization's affairs. The individuals charged with governing must handle the organizational duties with the care that an ordinarily prudent person would use under similar circumstances.

For many years, directors and officers of nonprofit organizations enjoyed a sense of invulnerability because their services were associated with a nonprofit and not an attractive target for litigation. Nonprofit board members who continue to believe they are invulnerable today may be in for an unpleasant surprise.

The importance of these three duties becomes crystal clear when a nonprofit board member is faced with a lawsuit alleging improper fiduciary oversight or improper oversight of employment practices resulting in allegations of sexual harassment or wrongful termination.

More than ninety percent of claims against boards of directors involve some type of employment dispute.

While every D&O claim can be costly to defend, the ten percent of claims not involving employment disputes can be among the most expensive claims, and ironically, these often strike the smallest organizations.

D&O Continued...

Employment-related suits may allege a wide range of wrongful acts, from sexual harassment, to wrongful termination, to age discrimination or violation of the Americans with Disabilities Act (ADA). The risk of facing an employment-related lawsuit does not necessarily expand proportionately by the number of paid employees in an organization. Very often, the parties at odds in a wrongful termination lawsuit are the executive director or parish administrator and the board of directors. **Many of these lawsuits can be avoided, or at least be dismissed in the early stages of the lawsuit, if the nonprofit simply follows its own personnel policies.**

*Source: Nonprofits Insurance Alliance of California, <https://insurancefornonprofits.org/>

II. Risk Management

The technical definition of Risk Management is “The art or science of anticipating and controlling all elemental, inherent, and environmental hazards (risks) that could cause financial loss, and determining the most efficient means of financing such a loss.”

Four things that can be done with risks:

- *Avoid the risk (Avoid the activity)
- *Transfer the risk (Purchase insurance)
- *Reduce the risk (Identify potential hazards)
- *Retain the risk (Recognizing risk / agree to accept it)

III. Property Coverage

The most comprehensive cause of loss form is called Special Form. In the past, this was referred as the All Risk form. The term All Risk is no longer used in the property contract. Special Form covers direct physical loss unless excluded or limited.

Examples of exclusions: Earthquake, Earthquake Sprinkler Leakage, Flood, Landslide, Earth Rising, Sinking or Shifting, War, Nuclear Reaction, Property Damage by Insects (i.e., Termites), Wear & Tear, Deferred Maintenance, Etc.

Security Measures

As noted earlier, “Reducing the Risk” of a particular exposure is essential to maintaining the security of the school and its property. Below are some of these areas of exposures:

**Locks / Doors*

- Are all exterior doors equipped with proper locking devices?

**Windows*

- Are all windows secured no matter how small or inaccessible?

**Lights*

- Are exterior lights installed to illuminate the exterior of buildings and their alleyways?

**Intrusion Devices*

- Are security alarm systems installed?

Fire Prevention Measures

Arson and now wildfire remains the leading cause of loss for schools and early childhood centers. The National Fire Prevention Association's studies show that an average of 1,450 places of worship are destroyed by fire in the United States each year. See www.nfpa.org for more information.

Here are a few recommendations – in some cases, requirements:

- *Install a fire detection and alarm system that is monitored by a central station that will notify your local fire department.
- *Check the facility kitchens to be certain the stove and oven are turned off and that there are no gas leaks.
- *Hire a licensed electrician to check the integrity of the electrical.
- *For commercial kitchen units, schedule professional cleanings.

Fire Protection Systems

An officer of a leading Southern California protection service company advises that insurance company requirements of fire alarm installation will become commonplace in the next five years. Below is a list of the basic detection systems:

- *Smoke and/or heat detection system
- *Automatic fire sprinkler system (which will also operate as an automatic detection system)

Note: The cost for any of these systems can range from \$4.00 to \$6.00 per square foot. The monthly cost for a central station monitoring system can range from about \$30.00 to \$70.00 a month.

IV. Leasing of Church Property

Church organizations will rent or lease their property to other groups. Below are a few guidelines:

- *Hold harmless agreement on a Facility Use Waiver Form...available from jennifer@nancybondinsurance.com. Please email to request the sample form.
- *Consideration of key distribution and alarm codes.
- *Insurance protection – every group needs their own insurance, names your congregation name “Additional Insured.”

V. Time Element Coverage

The term “Time Element” means the amount of the loss that is directly linked to the time it takes to repair, rebuild, or restore the damaged property. The most frequently written time element coverages protect against “loss of income” when a business is interrupted and protect against the extra expense that may be incurred when a business attempts to continue its operations following a property loss. Call it Church Interruption Insurance.

VI. Liability Coverage

The Commercial General Liability (CGL) policy provides protection against lawsuits alleging bodily or personal injuries or property damage caused by various operations or actions of your church.

The standard CGL policy provides the following coverages:

- *Premises Operations
- *Products & Completed Operations Liability
- *Personal & Advertising Injury Liability
- *Fire & Property Damage Liability if you rent space
- *Host Liquor Liability
- *Incidental Malpractice

Please note a few standard exclusions: Sexual Misconduct, Injuries to Athletic Participants, Damages Caused by Pollution or Asbestos, Employment Related Practices Liability, Directors & Officers Liability, Non-Owned & Hired Auto Liability, Pastoral Counseling Liability. These can often be added back by endorsement and often additional premium charged.

VII. Umbrella / Excess Liability Coverage

Quite often, a basic limit of \$1,000,000 for liability coverage is not enough to protect your programs and ministries. Umbrella provides extra layers of coverage in \$1,000,000 increments. In many cases, the insurance carrier providing the basic liability coverage may not be willing to provide more in an Umbrella. In that case, Umbrella or Excess Liability policies may be purchased separately to provide additional amounts of liability coverage.

VIII. Directors & Officers Liability Coverage.

In California and other states, nonprofit officers and directors can be held personally liable for **damages**. Most Homeowner's policies do not provide this protection. D&O Liability coverage is the solution. Some states require D&O insurance by statute.

Please keep in mind that the statutes **do not confer immunity from suit, but only immunity from liability for damages arising out of suit.** Therefore, a director and officer of a nonprofit can still be sued and cost of defense will be an ongoing expense. Whether or not the actions of the director or officer of this nonprofit that prompted the suit are considered immune to damages will be a jury question.

Directors and officers may be sued by anyone for a myriad of reasons. For example, they may be sued for conflicts of interest, failure to pursue claims against persons that have injured the corporation, exceeding authority granted in the Articles and Bylaws, misrepresenting the financial condition of the corporation, intentional, wanton or reckless acts, gross negligence or action based on fraud.

IX. Sexual Misconduct Coverage

Risk management, as it relates to the church's sexual misconduct exposure, requires church leaders to become informed of this problem and become empowered so as to lower the risk of sexual abuse through preventative measures.

Policy and procedures **must** be established to provide safeguards against sexual misconduct. Please email jennifer@nancybondinsurance.com for a few sample procedures.

Ways to Reduce Risk of a Physical or Sexual Abuse Allegation/Incident:

- *Follow all state laws (fingerprinting, background checks, etc.)
- *Check references of potential employees
- *Identify areas of vulnerability (example: leaving an employee alone with a group of children, blind spots in a room, bathroom routines, etc.)
- *Maintain proper ratios in schools and centers at all times
- *Document all injury and incident reports involving children very carefully, have parents sign the report when they pick up child, and keep copy on file

If you receive an allegation of physical or sexual abuse, take it seriously, and **Report to Licensing and Child Protective Services** . Your licenser, attorney and/or insurance carrier may have additional steps to take.

Four critical areas that need addressing in the church and school's policies and procedures:

- *Worker Selection/Screening
- *Worker Supervision
- *Reporting Obligations
- *Response to Allegations

A **Response *Coordination Team*** should be named and its membership clearly publicized. The composition of the team should reflect professional expertise in at least the following areas:

- *Psychological Counseling
- *Child Advocacy
- *Law
- *Conflict Resolution
- *Insurance and Risk Management
- *Personnel Management

"SAFEGUARDING GOD'S CHILDREN"
PROGRAM AVAILABLE - Creating a Safe Haven

X. Financial Management

Proper financial management is essential for maximizing a church's financial resources for effective ministry. More than that, leadership, which exercises responsible stewardship and demonstrates financial accountability, will elicit trust and release church members to be faithful in their personal stewardship.

Guidelines:

- Are there quarterly or annual financial reports?
- Is the audit of the books conducted by a CPA?
- Is the school treasurer's position bonded?
- Are new school employees/volunteers required to complete and sign employment applications?
- Are there more than two unrelated individuals counting/handling cash who are rotated on a regular basis?
- Is the treasurer restricted from making or changing procedures on handling finances?
- Are receipts and vouchers required for all funds expended?
- Are checks stamped "For Deposit Only" immediately after being received?
- Is countersignature required for checks over \$500.00 and bank accounts reconciled by someone who is not authorized to make deposits or withdrawals?
- Do you use an outside Payroll Service to make sure all taxes are paid?

XI. Fidelity Bonds

Fidelity Bonds, also known as Employee Dishonesty Bonds, agree to indemnify the employer (the insured) against any loss of money or other property which the insured sustains through any fraudulent or dishonest acts committed by any of its employees, officers, or volunteers, whether they are acting alone or in collusion with others, up to the amount of coverage stated in the bond.

It is difficult to recommend a specific amount of fidelity bond coverage to purchase. The amount will depend upon the school or center's total budget, the accounting controls the church has built into its system, and requirements of its funding sources. Our Insurance Program comes with a limit of \$100,000. We see too many policies from other programs with limits of \$5,000 or \$10,000 at maximum.

XII. Workers' Compensation Coverage

Workers' Compensation insurance is mandatory insurance coverage that must be carried by all businesses with employees, regardless of the number of hours employees work and whether they are permanent, part-time, or only occasional workers.

Policy benefits include the following:

- *Medical
- *Income
- *Rehabilitation
- *Death

What an on-the-job injury costs:

- *Increase in your insurance premium
- *Time to find a substitute or hire another teacher
- *Time to modify job duties
- *Inconsistency in the program or ministry
- *Administrative time for documentation and follow up paperwork
- *Decrease in employee morale

Most common cause of Workers' Compensation injuries:

- *Slip
- *Trip
- *Fall
- *"Out of control" children
- *Lifting heavy items
- *Climbing on a desk or accessing zones that are off-limits

Ways to reduce risk:

- *Have a clear policy about appropriate footwear and enforce it
- *Use ladders, not tables and chairs, for things that are out of reach
- *Clean up spills immediately, pick up toys, sweep sand off pavement
- *Train staff on proper lifting techniques and safety concerns before an accident occurs
- *If your staff sustain an injury, insist they go to the doctor and file a claim. If they refuse, have them sign a statement to that effect and call the insurance company to tell them.

XIII. Accident Medical Insurance

Supervision is the most basic tool we have to prevent children's injuries. Most of children's injuries occur on the playground. The family typically does not sue the organization; it's their medical insurance company that tends to seek repayment from the church.

Costs of a child's accident claim:

- *Cost of claim/insurance premiums go up
- *Administrative time for follow up and paperwork
- *Decrease in parent/child's morale
- *Possible loss of enrollment due to child's withdrawal from program
- *Damage to church and center's reputation

Parent Accidents While On Your Property:

- *Less of a risk than other categories, but still happens
- *Most common causes are like Workers' Compensation: slip, trip, fall

Ways to Reduce Risk:

- *Clean up spills
- *Pick up toys/tripping hazards
- *Sweep sand, wood chips, gravel off of pavement
- *Take extra precaution on rainy days
- *A student accident insurance policy can also cover adult volunteers

XIV. Americans With Disabilities Act – ADA

Religious organizations are exempt from compliance; however, this does not mean that we should ignore the intent of the law. And, if you have a school that is separately incorporated from your sponsoring congregation, compliance **may** be required if you have 15 or more employees. The law states:

Under the ADA, all children with special needs must be provided with a REASONABLE accommodation to facilitate their participation in your program.

Exceptions:

- *Undue financial hardship (hiring additional staff, major structural modifications)
- *Direct threat to the health and safety of other children or staff
- *Would change the fundamental nature of the program

XV. Employment Law & Employee Benefits

*Get to know your state's employment laws. Search online for more information on your state:

California: www.dir.ca.gov

Arizona: <http://www.ica.state.az.us/Labor/labortop.htm>

New Mexico: <http://www.dol.state.nm.us>

Nevada: <http://detr.state.nv.us>

*Be consistent and fair – discuss job expectations at the time of hire.

*Have an introductory (probation) period.

*Have a comprehensive employee handbook which covers all aspects of employment, and then have employee sign a statement saying they have “Read, understand and received a copy of the Employee Handbook. All questions were answered.” This policy has saved more than one employer from a lawsuit.

*Have a legitimate business reason for every decision; communicate consistently with employees; remain objective; listen to employee before decision or discipline occurs.

*Document, document, document! Set up a system easy for you to use (day planner or notebook). Document using factual statements; avoid conclusions or opinions in your documentation.

*If providing employees benefits, be sure to follow best practices to avoid discrimination – consider a percentage of contribution rather than a stipend or set dollar amount per person.

EEOC – Equal Employment Opportunity Commission

EEOC protects classes of people against discrimination in employment: race, sex (including pregnancy), national origin or ancestry, age, disability, etc. An employee in a protected class who feels they have been discriminated against can file a claim with the federal agency of the Equal Employment Opportunity Commission. (800) 669-4000 will connect you with your local office.

Depending on the type of complaint filed, employer will have to supply two years of information concerning every employee at the center who was disciplined, terminated, promoted, hired and the reasons for any/all actions taken.

FMLA – Family and Medical Leave Act of 1993

To be eligible, an employee must have worked for at least a year, and for 1,250 hours over the previous 12 months, employed by an organization with at least 50 employees within a 75 mile radius. Ministries with 50 or less employees are exempt from this Act.

Note:

The information contained in this booklet has been compiled from sources believed to be reliable and correct. However, Nancy Bond Insurance Services makes no warranty, expressed or implied, with respect to the use of this information. Each organization using this information should consult with their legal counsel or other advisors to determine the proper use of this booklet.

This overview is not intended as a complete explanation of policy coverage. For full details of your own insurance, please refer to your insurance policy for actual policy terms, definitions, conditions and exclusions.

Nancy Bond has been working with the Evangelical Lutheran Church in America exclusively since 1995, Jennifer Bond since 2001. Their expertise is in Risk Management, and they are Certified Trainers for the **Safeguarding God's Children** program.

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