What Is the Board's Role in Managing Risk?

Do you need a policy defining the board's function in insurance matters?

Q: Should the board have a role in an organizational risk management program? Should there be a policy that permits board members, employees, volunteers, and others to review the organization's insurance contracts?

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A: The term "risk management" includes measures taken across a spectrum of activities, including educating and training people about ways to reduce the risk of lawsuits, and creating and enforcing policies to minimize risks. Having an up-to-date employee manual, screening potential employees, and creating written job descriptions are examples of risk management strategies. The board's role in these activities will vary with the size and nature of the organization and the risks presented.

As part of a risk management program, it's crucial to acquire the proper type and level of liability insurance. The days when nonprofit organizations and their volunteers enjoyed "charitable immunity" from liability are long gone. Today, a nonprofit and its paid and volunteer staff enjoy only limited protection under the home state's statutes. (Check with your attorney if you have any questions about your state's law.) In some jurisdictions, the statutory shelter depends on the nonprofit having liability insurance. Moreover, regardless of the state statutes, federal law liabilities—such as those involving employee remedies for discrimination or harassment—apply to nonprofits and need to be insured against. (Employment liability is the fastest growing source of claims against nonprofits.)

Management, including the governing board, will play a definite role in acquiring coverage for the organization and its staff. Depending on many factors—including state laws, staff size, assets, revenues, principal activities, fundraising methods, and number of volunteers—there could well be a need for sophisticated, professional assistance in structuring an adequate risk management program. That means identifying and dealing with the right insurance broker. For larger operations, it may mean considering the need for a full-time, in-house risk management officer. The board's degree of involvement in purchasing insurance will depend on the organization's management style and the severity of the risk. It will also depend, of course, on whether any board members have insurance expertise. If they do, it makes sense for them to help obtain appropriate insurance. But there is no legal standard, beyond basic duties of loyalty and care, that specifies a role for the board in connection with insurance.

There's no reason for an organization to hide its insurance contracts. On the other hand, making them available to all comers may not be the answer either. The legalistic language in most insurance forms makes it highly doubtful that a rule allowing volunteers and staff to review the policies would serve a practical purpose. Perhaps a more useful middle ground would be to ask your broker to certify a summary of in-force coverage, with limits, retentions, and other data relevant to those who are working for, or volunteering with, the organization. You could then provide this summary to those concerned with liability issues. Reading such a summary would probably be more meaningful and useful to them than viewing copies of the full policy.

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For details on creating a risk management plan, including purchasing appropriate insurance, see "The Emperor's New Clothes, Or How to Protect Against Lawsuits and Other Chilling Surprises" in our November-December 1995 issue. Also see the book Volunteer Liability and Risk Management *(to order, see page 27).*
—Ed.

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