

## D&O COVERAGE: FREQUENTLY ASKED QUESTIONS (FAQS)

### **Does our organization still need D&O insurance since charities are immune from liability in Maryland?**

Charities are immune from many types of liability under Maryland law. The General Assembly has enacted legislation to protect volunteers, board members, and staff. However, court decisions and statutes provide only limited protection. There are several reasons it still makes sense for your organization to get D&O coverage.

1. Immunity from liability doesn't mean that someone can't sue you and force you to incur the expenses defending your organization and its directors, employees and volunteers. One of the principle reasons for buying D&O coverage is that it will pay for the costs of defense. According to a recent industry survey, the average cost incurred by a nonprofits organization to defend a D&O case is \$147,274. Unless your organization has sizeable cash reserves, you may not have the funds to pay an attorney to defend you.
2. Maryland's immunity laws, while good, may not protect your organization and its board members, staff, and volunteers from all potential liabilities. Many cases brought against nonprofit organization board and staff are based on federal laws which may be unaffected by your state immunity.
3. The Maryland laws which provide immunity for your staff, board members and volunteers, only do so if the organization has insurance coverage. The Maryland law specifies that your coverage must have limits no less than either \$250,000 per claim and \$500,000 per total claims arising from the same occurrence OR \$500,000 per total claims arising from the same occurrence and \$750,000 per policy year.
4. The most significant impact of Maryland's immunity provisions is that it enables you to get a better deal on the insurance you do buy. In addition, it provides limits beyond which your organization, its employees, and volunteers, can't be held liable. Liabilities which are subject to the immunity are capped at the amount of insurance which you have in place.
5. Your bylaws probably indicate that you will indemnify board members

### **Is it enough that most of our board members have personal umbrella policies?**

No. Is it really fair to ask your board members to put their personal insurance policy on the line for the volunteer work they do in the organization? Many board members rightfully feel that they want their personal insurance policy to cover their personal needs. They expect you to protect them for the volunteer work they do for your organization. And, in any event, an individual's personal policy provides no protection for your organization, its staff, or other board members and volunteers.

### **Is it enough that my organization already has general liability insurance?**

No. To put it simply, general liability coverage is extremely limited. It doesn't provide protection for many of the people you want to protect. Nor does it cover many of the

situations that are most likely to occur. For example, somebody slips and falls in your office and sues your organization for their injuries—that's likely to be covered by your general liability policy. The same person sues your officers and directors alleging they were negligent in managing the organization by allowing a dangerous condition to exist! They won't be covered in most general liability policies, but may be covered as a D&O claim.

A staff member sues the organization, its executive director, and all the board members alleging that he was the victim of sexual harassment by the director and that the board was negligent in supervising the director. That won't be covered in most general liability policies, nor will it be covered in many D&O policies. It is covered under the Maryland Nonprofits D&O program.

### **What are "Risk Management Requirements?"**

To be covered by the Maryland Nonprofits D&O program, it is required there be a minimum number of board meetings with written minutes, and written personnel policies. Written personnel policies and written board minutes reduce the risk of having a successful lawsuit being brought against an organization. The staff of Maryland Nonprofits may review the minutes and personnel policies and if thought necessary, make written recommendations about changes that would reduce the risk of legal action. It is also recommended that a staff member or a board member attend at least one training a year that is focused on risk management.

### **My organization's budget is way under \$5,000,000—why should I pay the same rate as a bigger organization?**

You probably won't. D&O insurance covers the cost of litigation and those costs will not differ significantly because of the size of the organization.

### **Why is my current policy less expensive than the Maryland Nonprofits' program?**

There could be several reasons for the price difference. Your policy could have lower coverage limits; it may have many exclusions; the policy may not allow the prepayment of legal fees; the policy could have a large deductible. In some cases organizations have been insured by the same carrier for many, many years and the rate has never been adjusted upward. If your existing policy has the equivalent coverage as the Maryland Nonprofit plan and a lower premium, we encourage you to stay with the plan and enjoy the savings. We have a worksheet available for download so you can compare your current policy with the Maryland Nonprofits program.

### **Can we get someone to talk to our Board about this program?**

No, we cannot offer this service and still maintain the low price. One of the reasons D&O insurance for nonprofits is so expensive is that it takes a lot of time to make the sale. The sales person first talks to a staff person, she makes a presentation to the finance committee, and then there is a command performance at a board meeting. Maryland Nonprofits cannot both keep rates low and provide intensive one on one selling services.

**Can we buy other types of insurance through the Maryland Nonprofits Program?**

Yes. Maryland Nonprofits has the following programs: fidelity bond, worker compensation, health, life, dental and long term disability. Gorges & Company, Incorporated, the exclusive broker handling the Maryland Nonprofits D&O Fidelity Bond Program as well as an administrator for the Maryland Nonprofits sponsored Employee Benefits Trust, is a full service insurance company. If you do not have an existing relationship with a broker or if you wish to change brokers, you can contact Rob Cannon at 410-561-8280 or 800-449-8280 who will work with you on your insurance needs.

**I like my current insurance brokers; can I buy this policy from them?**

No. To keep the cost of this insurance as low as possible, we must keep administrative costs low. Using only one broker reduces costs. If you have a good relationship with your insurance person, you can continue to purchase other insurance products through her. Maryland Nonprofits has authorized Gorges & Company Incorporated to be the only broker for this program. Other brokers may be able to offer a Chubb Policy but it may not be identical to the Maryland Nonprofits program. If your broker indicates that he has a better product, we recommend that you go over the analysis worksheet with him to determine if indeed the product is comparable.

**My organization has a budget of more than \$5 million—am I still eligible for this program?**

Yes, you may still qualify for a reduced premium as part of the Maryland Nonprofits program. Complete the application and you will be given a quote. Many large organizations have realized significant savings by becoming part of this program.

**My current policy runs for another four, six, or eight months—what can I do?**

You may apply at any time. The new policy will become effective when your current policy expires.

**If my organization is a member of Maryland Nonprofits and if an application is submitted, is my organization guaranteed coverage under the Maryland Nonprofits program?**

No, there is still an application and review process that needs to be done. All organizations are encouraged to submit an application.

**My organization is not a member of Maryland Nonprofits; do we have to join in order to submit an application?**

No, you may submit an application before joining. If your application is approved and you accept coverage, your organization will be required to join Maryland Nonprofits.