

Abstract: Anyone who serves as a director or officer of a company, or even sits on the board of a nonprofit, needs to consider that this could make their personal assets vulnerable. This article suggests one way to gain some protection: through a directors and officers insurance policy. A sidebar clarifies the difference between directors and officers insurance and errors and omissions coverage.

Do you need the protection of a D&O insurance policy?

Your efforts toward ensuring your financial security might be focused on building up your assets through wise investing or growing your business. But protecting the assets you already have is just as important. And if you serve as a director or officer of a company, or even sit on the board of a nonprofit, your assets may be vulnerable. One way to gain some protection is to obtain coverage under a directors and officers (D&O) insurance policy.

Assessing your risks

D&O insurance helps protect an organization's directors, officers and board members from liability resulting from management decisions. Just a few examples of how such individuals can put themselves at risk include:

- Committing a crime,
- Failing to disclose a conflict of interest, or
- Breaching their fiduciary responsibilities.

But even if directors or officers do nothing wrong, they still can be held financially responsible for others' missteps if they're sued and the organization lacks sufficient assets to protect them. Indeed, directors and officers are vulnerable to many types of lawsuits.

Employment-related litigation — covering such claims as harassment, discrimination and wrongful termination — is particularly common, while legal action also may be brought by unhappy shareholders, lenders, customers, suppliers, competitors or government regulators.

You may feel less vulnerable if you sit on the board of directors of a nonprofit. Although nonprofits do lack shareholders, they still have stakeholders — financial contributors or other individuals with a personal interest in the organization's mission. Thus, nonprofit directors, officers and board members can find themselves at risk if these stakeholders decide to sue its leaders for mismanagement.

Contemplating coverage

When contemplating a D&O policy, determine exactly what it covers. For example, some insurers won't cover fraud-related claims, while others specifically exclude employment-related litigation.

Next, weigh what's covered against the specific risks you're most likely to face. For example, if you're thinking about joining the board of an organization with a history of rocky employee relations, determine whether you'll be protected from employee-related lawsuits. If you uncover potential gaps in the D&O policy, or if it includes provisions that could lead to your coverage being rescinded in certain situations, you may need to obtain additional protection through supplemental liability insurance.

Building a safeguard

Make no mistake, a D&O policy can be costly because of the high financial stakes involved. So an organization in cost-cutting mode may not wish to offer you this coverage. Nonetheless, if you're a director, officer or board member, a policy may serve as a critical safeguard for your family's assets. Contact our firm for an assessment of your situation.

Sidebar: D&O vs. E&O

Many people mistakenly view errors and omissions (E&O) insurance as an alternative to a directors and officers (D&O) policy. Don't be among them; the two types of policies cover different sets of risks.

E&O insurance covers the business itself against problems stemming from potential failures in the products and services a business offers its customers; D&O insurance protects individual officers and directors from financial risk stemming from management decisions — either yours or someone else's.

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