ASSOCIATION RISK MANAGEMENT
NONPROFIT DIRECTORS & OFFICERS LIABILITY

Summary Introduction
Directors & Officers Liability insurance (D&O) is intended to protect the insured against allegations of wrongdoing in connection with the performance of their duties on behalf of the organization. In many but not all policies defense expenses are included within the limit of liability, meaning that the costs of defense will reduce the limits of insurance available for payment of settlements and judgments. D&O policies are written on a claims made basis. This means that the wrongful act that gives rise to a claim under a D&O policy need not be committed during a policy year. However, the claim must first be reported to the carrier during the policy year.

Who is Insured?
Generally speaking, directors, officers, committee members, employees and volunteers acting within the general scope of their authority on behalf of the organization are insured against covered claims that they are legally obligated to pay. Unlike D&O in the for profit/corporate world, the nonprofit D&O policy includes coverage for the entity as well as the individual insured.

What Perils are Insured?
The D&O policy provides extremely broad coverage. For most 501(c) organizations, the D&O policy has become a de facto employment practice liability. As much as 90% of reported claims among 501(c)’s are related to adverse employment actions. In addition to direct employment perils such as wrongful termination and failure to hire, associated causes of loss such as discrimination (sex, race, age, etc) and harassment are also covered in most policies. Personal injury perils such as libel, slander, defamation, invasion of privacy and unauthorized use of likeness are typically included in the policy definition Wrongful Act and are therefore “covered causes of loss”. Publisher’s liability, including copyright infringement and plagiarism, are also covered in most cases. In addition to insuring expenses for settlements and judgments, defense costs are also included. The defense provision of some policies is referred to as Duty to Defend. Under a Duty to Defend policy, it is the duty of the carrier to tender a defense on behalf of the insured and to pay for the related costs. The carrier has the responsibility to appoint capable counsel to represent interests of the insured. The other type of defense provision is known as Indemnification. Under indemnification policies, it is the duty of the insured to defend claims selecting an attorney subject to approval by the carrier.

Significant Exclusions
Incorporated in all D&O policies are exclusions for claims arising from bodily injury and property damage, fraud, deliberately dishonest acts, pollution, Employee Retirement Income Security
Act (ERISA) and claims brought by one insured against another insured (known as an insured versus insured exclusion). Often, additional exclusions are added by endorsement based on the risk characteristics of the applicant. These might include exclusions relating to areas such as professional services, antitrust, medical malpractice, and publishing.

DISCLAIMER: Actual policy wording and coverage scope will vary among policies. Final determination of coverage is exclusively reserved to the carrier.