

Private Foundations Bulletin

Business Insurance: What Does Your Private Foundation Need?

We are often asked by both newly formed and well-established private foundations, “Why do we need Directors and Officers insurance as well as other types of insurance.” Our response is clear: the right insurance can help protect your Private Foundation from unfortunate and unforeseen circumstances. The questions, of course, are what type of insurance your Private Foundation should own and how to go acquiring it? In this month's Bulletin, we explore important issues regarding common types of business insurance.

A sound assessment of coverage options includes considering the following types of insurance:

- Directors and Officers
- Cyber
- Fidelity/Employee Dishonesty
- Property and Fine Art

As the Foundation considers which coverages comprise the ideal insurance portfolio, it should evaluate its existing risk framework to determine priority of insurance policies and coverage limits. Examples of risk types to consider are:

- Operational Risk
- Financial Risk
- Reputational Risk

Directors and Officers Insurance

Directors and Officers (D&O) insurance is one of the most common types of business insurance and coverage we believe Foundations should consider at a minimum. Directors and Officers find themselves in the unique position of exposure to claims involving harassment, sexual assault, discrimination, worker's compensation and financial mismanagement. These claims can come from parties such as employees, grantees, volunteers, regulators and donors, among others.

Most D&O insurance policies have common benefits such as legal cost reimbursement, which provides defense coverage for frivolous suits or allegations of wrongdoing and many offer the option for entity coverage. Policies tend to provide flexibility in limits for premiums, deductibles and sliding scales. Lastly, D&O policies can provide protection beyond indemnification, which may be a key incentive for smaller foundations.

Cyber Insurance

Cyber insurance is another common and valuable type of insurance. It can provide a Private Foundation with data breach coverage, which includes breach notifications, credit monitoring and legal action protection. It can also safeguard against cyber extortion attempted through ransomware and malware. This can assist a Private Foundation in recouping losses in the event of a cyberattack. Cyber insurance policies can help with legal support to deal with any post-attack fallout.

An important note about cyber insurance: many policies provide business interruption loss reimbursement however, this is typically not applicable to Foundations because it focuses on loss of income.

Insurance When You Have Employees

Foundations of a certain size and complexity may have employees and, while they play an essential role in furthering the Foundation's mission through its operations, they may increase the potential for claims, lawsuits or other employment law issues. Another potential and ever-present risk is that of employees engaging in fraudulent behavior that can cause the Foundation financial and reputational harm. Insurance policies that help with crime fidelity and employee dishonesty can be worth the cost should an employee engage in fraud. Wrongful termination suits or discriminatory suits are also a possibility for foundations with employees and, consequently, another reason to consider proper types of insurance to cover the Foundation against such occurrences.

Property and Fine Art Insurance

Owners of property and fine art have the fiduciary responsibility to protect and insure all that has been entrusted to their care. Property insurance is relevant to any Foundation that owns land or any other type of property. When making land improvements or renovations to real estate, Builder's Risk insurance may be appropriate. This type of insurance protects a Foundation's insurable interest in materials, fixtures and equipment during the construction or renovation of a building or structure.

Fine art requires special consideration for insurance. High value items usually require floater insurance, which covers personal property that is easily movable and provides additional coverage beyond what normal insurance policies offer. Fine Art floater policies generally cover one individual item, so each piece of fine art will require a separate policy.

Considerations for All Types of Insurance

It should be noted that price is not the only factor a Foundation should consider when shopping for an insurance broker or underwriter. The breadth and depth of coverage should be considered as well as the responsiveness of the insurance provider. It's imperative that the policy be clearly written and easily understandable. Foundation representatives should feel confident that they can renew the policy without difficulty.

When conducting initial due diligence, speaking with current policy holders is helpful in determining whether they feel satisfied with the policy and their relationship with the insurance broker or underwriter. For recommendations and referrals, consulting with colleagues can be productive. At all costs, foundations should try to avoid self-dealing when shopping for insurance.

As a reminder, the cost of insurance counts towards the 5% charitable distribution requirement that pertains to Private Foundations.

Like all insurance, policies from different insurance providers can provide different terms, protections and prices. We highly recommend that ensuring that policies (such as a D&O policy) are a Non-Profit policies. Non-Profit policy pricing can be substantially different from that of For-Profit policies. Insurance underwriters consider factors such as a Private Foundation's assets, income, past claims and employee count when pricing their policies. There are also a number of Private Foundation membership organizations, such as Exponent Philanthropy, that have reduced negotiated rates for D&O policies; in conjunction with membership fees, these may still cost less than an outright policy with a private broker while also providing the primary benefits of membership.

The Foundation's reputation is of utmost importance, as is protecting those Foundation managers who often act in a volunteer capacity. Ensuring that proper, necessary and "right-sized" insurance is in place is central to protecting the Foundation and those most dedicated to its cause.

Contact Us

We welcome the opportunity to answer any questions you may have related to this topic or any other accounting, audit, tax or advisory matters relative to private foundations. Please call 212.286.2600 or email any of the Private Foundation Services team members below:

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