

Who Sues Nonprofits and Nonprofit Boards and Why?

One of the myths associated with nonprofit D&O exposures is that there are few sources of claims since nonprofits don't have shareholders. Nonprofits serve large and varied constituencies to which their boards owe specific fiduciary duties similar to duties owed by corporate boards. These constituencies are potential plaintiffs in legal actions brought against nonprofit boards. Potential claimants in a suit against nonprofit directors include:

1. Insiders

The current and former staff of a nonprofit may bring actions alleging a host of wrongful acts, including wrongful termination, discrimination, sexual harassment, and Americans with Disabilities Act violations.

2. Outsiders

Third parties that have a relationship with the nonprofit may allege harm caused by the nonprofit and/or its directors, officers or employees. Outside sources can be vendors, funders, or another nonprofit.

3. The Entity

The nonprofit may bring an action against its directors and officers. Examples include claims by current management against a former trustee. In some states, derivative suits are permitted. In a derivative suit, members of a nonprofit may bring a claim on the nonprofit's behalf against a director and officer. (Note: Claims by the entity against its directors and officers will likely be excluded under most nonprofit D&O policies).

4. Directors

A nonprofit director may sue another board member alleging violation of a duty owed to the nonprofit. Under certain circumstances such an action may be compelled.

5. Beneficiaries

The people you are in business to help- your service recipients- may bring claims against directors and officers alleging wrongdoing.

6. Members

Directors and officers of membership associations are vulnerable to claims brought by members alleging harm to the interests of the member.

7. Donors

A nonprofit's contributors may sue directors and officers alleging misuse of a restricted gift.

8. State Attorney General

In most states, the state attorney general represents the interests of the general public in assuring the proper management of public benefit corporations. As such, the Attorney General may bring a claim against nonprofit directors and officers alleging wrongdoing.

9. Other Government Officials

Other government officials, including representatives of the U.S. Internal Revenue Service and the U.S. Department of Labor, may bring actions against nonprofit directors alleging violation of state or federal laws.

Directors' & Officers' (D&O) Liability Insurance

D&O Liability Insurance provides coverage against "wrongful acts" which might include actual or alleged errors, omissions, misleading statements, and neglect or breach of duty on the part of the board of directors



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