

## Insurance Coverage for Non-Profits, Their Directors and Officers

By Eugene R. Anderson

**T**he nature and structure of not-for-profit (or “tax-exempt”) organizations is as diverse as that of for profit organizations. But not-for-profits are different and they require some different types of insurance. Insurance is a means of eliminating or mitigating costs that are out of the usual course for the not-for-profit. Insurance should permit the directors, officers and employees to “sleep easy” knowing that if some untoward event happens, the event will not disrupt normal operations or place their personal assets at risk. A subsidiary benefit is that insurance may put the handling of the untoward event in the hands of experts or, at least, semi-experts.

Sounds just like for profits? Yes, but the difference is that for profit organizations have owners (shareholders) and radically different drummers to whom they march. Not-for-profits may have members, but no owners *per se*, other than the general public.

Although not-for-profits do not have shareholders and thus are not subject to shareholder lawsuits, their directors and officers are not immune from liability. Accordingly, they should purchase directors and officers (“D&O”) liability insurance designed specifically for not-for-profits and priced to cover only the risks that directors and officers of not-for-profits actually face. The

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D&O policy protects directors and officers against claims alleging wrongful acts, i.e., any negligent act, error or omission, or breach of duty committed by the director or officer in the discharge of his or her duties and solely in his or her capacity as a director or officer.

Not-for-profits need employment practices liability (EPTL) insurance. Unhappy and disgruntled employees sue! Not-for-profit employees have a spirit of community, selflessness and idealism. When their idealism wanes or is shattered they may blame the organization — and sue. EPTL

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insurance places the handling of such problems, which are emotionally laden from everyone’s point of view, in someone outside of the not-for-profit.

Workers compensation insurance is required by law, and some form makes sense for not-for-profits.

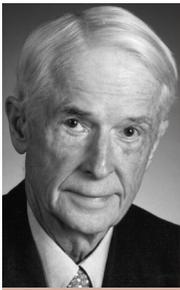
Not-for-profits owning property need the insurance coverage normally associated with the particular kind of property, including property and casualty, premises liability and automobile insurance.

Do not be insurance rich and cash poor. As with for profits, the business comes first.

Many for profits use outside insurance consultants to evaluate and recommend insurance programs. In special instances these consultants may be available to not-for-profits.

The final word: Do Good and Avoid Evil. ▲

*Helpful Tip: Insurance brokers are valuable board members for many, many reasons. They are very astute at seeing holes and helping to plug them. If they play a dual role for the not-for-profit as insurance brokers and as directors, however, they must be scrupulous to avoid conflicts of interest.*



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who

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## New IRS Form 990 Requires More Information and Planning

By Abbe I. Herbst

Effective for the 2008 tax year, the Internal Revenue Service ("IRS") has issued a new Form 990 (Return of Organization Exempt From Income Tax), the reporting form filed annually by more than 200,000 large not-for-profits, including publicly supported charities, social welfare organizations and professional associations. The new Form 990 is the first redesign since 1979, and requires much more information than its predecessor. It consists of an 11-page core form, having 11 parts, which must be completed by all organizations filing the Form 990, and additional schedules that may be required, depending upon the answers to a checklist that is part of the core form.

Some areas of major changes include new sections asking about the organization's governance structure, policies and disclosure practices. There are also new definitions of "officer" and "key employee" applicable to all organizations. Indeed, the instructions to the new Form 990 include a 19-page "Glossary to Instructions." In addition, the requirement to report the compensation paid to the five highest compensated employees is made applicable not only to publicly supported organizations and certain charitable trusts, as was previously the case, but to all organizations required to file the new Form 990, such as social welfare organizations, business leagues, trade associations and social clubs.

The revised Form 990 contains new reporting requirements for museums and other organizations maintaining collections of works of art and other items, credit counseling organizations and others holding funds in escrow or in custodial arrangements, and organizations maintaining endowments. One of the new schedules seeks information regarding special events, gaming activities and arrangements with professional fundraisers. Special reporting schedules are required of schools, hospitals and those having transactions with interested persons.

In order to allow organizations time to adjust to the new Form 990 (and the less complex Forms 990-EZ and 990-N), the IRS is using a three-year transition period. For tax year 2008, the new Form 990 will be required from organizations having gross receipts of \$1,000,000 or more or total assets of \$2,500,000 or more. For tax year 2009, the filing threshold will be gross receipts of at least \$500,000 or total assets of at least \$1,250,000. For tax year 2010, the Form 990 must be filed by organizations with gross receipts of at least \$200,000 or total assets of at least \$500,000. ▲

We hope you have found this issue of the *Estate Planning & Tax Advisor* to be of interest. We invite you to contact the editor, Abbe Herbst, at (212) 278-1781 or [aherst@andersonkill.com](mailto:aherst@andersonkill.com), with your questions and/or concerns.

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