Module 22: Insurance

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Risk Management and Insurance for Nonprofits, Part II

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Part one of this technical insert (see *MUSENEWS* summer 2001 issue) addressed how nonprofit organizations can establish a good risk management program prior to contracting for insurance. Such a program involves good record keeping; adequate security for people, facilities, and possibly collections; and emergency preparedness and disaster planning.

There are two primary kinds of insurance that nonprofit organizations should consider: property and liability. Within these categories, there are several types of insurance, some quite specialized. Because of this, it may not be possible to place all insurance with the same carrier. The advantage of having all of the insurance with one company is that if there was a liability claim, it would be more readily absorbed by the package of insurance coverage and therefore less likely to affect the cost of insurance premiums. However, the needs of certain nonprofits may warrant their obtaining some insurance from companies with expertise in specialized areas, making it unlikely that one policy could cover everything. Factors that could affect the choice of carriers include whether the organization is open to the public, if it owns buildings, if it owns historic buildings, if it owns a collection, if it loans and borrows objects, or if it sells food or products on a regular basis.

An important first step in selecting insurance carriers is to determine whether to work with a company agent, an independent agent, or a broker. There are pros and cons for each. A company agent works for a particular insurance company and owes allegiance to that company. An independent agent represents a number of companies and helps a client select the best choice among them. A broker works for the client and shops around to get the best insurance for the client's needs. Agents and independent agents have contracts with certain insurance companies and can write binding policies for them. A broker usually has no binding authority. Thus, if an organization has insurance through an agent or independent agent and wants to add insurance—perhaps for a special event or for an exhibition—the organization has only to contact the agent for the extra coverage. If the organization works through a broker, the broker probably would have to contact the insurance company to get the additional coverage.

Be sure to ask the agent the rating of the carrier he or she is recommending. Three rating agencies rank the financial stability and paying record of insurers. These agencies are A.M. Best (ranked on a scale of A++ to F); Standard and Poor's (AAA to CCC); and Moody's (AAA to C). Local libraries usually have information on these companies' ratings.[1] General industry information is available from the Insurance Information Institute in New York City or from the American Insurance Institute in Washington, DC.

An insurance underwriter works for an insurance company and reviews the risks in an insurance proposal, following the company's guidelines. It is crucial to present to the underwriter the most accurate picture possible of your organization's risk management in order to get the best insurance rates. An agent or a broker will help a client do this and also may have suggestions to improve the risk management program. The agent or broker should come to the property and make a thorough inspection. It is to everyone's advantage to prevent a loss. Some insurance companies will send a loss-control agent to inspect your facility.

As mentioned in part 1 of this insert, good record keeping is essential for all nonprofits. Computerized records, such as spreadsheets of an inventory, can help to present organized information to underwriters that may lower insurance premiums. For museums, on-site consultations such as the Conservation Assessment Program (CAP), administered through IMLS and The Foundation for Advancement in Conservation (FAIC), or the Museum Assessment Program (MAP) Collections Management Assessment, administered through the American Alliance of Museums, can also help provide useful advice on good risk management practices. These programs, funded through grants from the Institute of Museum and Library Services, are designed to help smaller museums meet professional standards.

Property Insurance

Many organizations contract for a commercial fire policy to cover fire damage or loss to buildings or property. These policies typically use Insurance Services Office (ISO) forms, which define what is covered and what is excluded. The forms are kept current by the ISO, a nonprofit insurance service, and have been tested in court. A package insurance policy may combine insurance for buildings and contents, as well as business auto and some forms of liability.

Nonprofits tend to have a low loss ratio, or number of claims. For this reason, pooled insurance, or group insurance, may be an attractive option. Seeking insurance with a group of other nonprofit organizations may be a cost-saving move because the similarity of coverage and the low incidence of loss may reduce premiums.

Pooled property insurance for organizations with collections should be in effect with an underwriter for similar types of institutions. Museums, archives, and other collecting institutions also need to consider that even though their loss ratio is low, the severity of the event may be high. That is to say, the number of incidents may be small, but when they occur, the cost is high. These factors may affect the insurance premiums. Here is where the professionalism of the organization and its level of security can help to mitigate the risks. A museum accredited by the American Alliance of Museums, for instance, might be viewed more favorably because it would adhere to certain standards of care. A property listed on the National Register of Historic Places might also be expected to adhere to certain standards regarding the physical structure. With pooled insurance, however, one might be at the mercy of other institutions whose losses might affect others if they do not hold to equally high standards.

There are several types of insurance policies designed especially for historic properties. You can get replacement cost on an older building that has been rehabilitated. These "old house" policies cover circumstances that ordinary homeowners (HO) policies do not, even those with special endorsements for guaranteed replacement cost or an agreed amount of insurance. The National Trust for Historic Preservation and others sponsor a historic house insurance program that offers this type of insurance. There are also policies for historic houses in urban areas and historic houses in rural areas.[2] Organizations that are housed in historic properties might want to look into this kind of coverage.

Organizations with collections might decide to contract for commercial properly insurance or to insure through a company with inland marine fine arts coverage. The former will be less expensive, but the latter will offer more complete coverage. You will get what you pay for. If the collection is rare and not easily replaced, it may be advisable to get fine arts insurance through an inland marine policy. (Inland marine insurance is generally purchased to insure specialty or unique properties, including fine arts.) Fine arts insurers also have the expertise to handle complicated claims from collections losses, which may involve knowledge of conservation and restoration. In looking at fine arts insurance policies, it's important to pay close attention to policy valuation clauses, exclusions, and warranties.

Fine arts insurance is in what is known as an "uncontrolled class," so premiums can vary widely and will be dependent on the underwriter's view of the likely risks involved. Insurance companies may be wary of writing claims. If the underwriter feels the risks are high, the premium will reflect it. Some small institutions may not be eligible for fine arts insurance. The insurer may require guards in the institution or other security measures that are beyond the capacity of a small museum or archives. In collections insurance, the keys to keeping your premium low are your fire suppression readiness and the security of your location.

The book *The New Museum Registration Methods, 5th edition* describes a number of provisions in inland marine policies that need to be understood and carefully delineated. All specifics concerning the ownership of objects, including loans, promised gifts, and bequests, should be covered in the policy. (There may be separate limits on owned and non-owned objects.) All categories of objects in the collections should be described in the policy. Excluded property (such as equipment) should be specified; this might be covered in a separate policy.

One cannot insure property for more than it is worth. Valuation of property, whether blanket (unscheduled), scheduled, or fair market value, must be specified. An organization might opt for a blanket policy covering an estimate of total value (loss limit) agreed upon by the insurance company and the insured, based on the probable maximum loss (PML). The PML is an estimate of the potential total destruction of the highest valued area of an insured location. This means that the insured does not have to insure for the full value of all of the property, which could be very expensive. For a small organization, the PML might be the entire building, but for a larger one, it might be a storage area, a wing, or a separate building with the highest value. If the items are scheduled, a value on each object must be conveyed to the insurance company on a regular basis. If objects are insured for fair market value, the amount will be determined by an appraisal after a loss. With historical objects, a fair market value may be difficult to determine. An organization might contract for a combination of a blanket policy and a scheduled policy, with only a few objects singled out for special coverage on a scheduled basis, where each object is insured for its own individual amount.[3]

A policy that covers “all risks” is preferable to one that covers “named perils.” The former covers everything not specifically excluded. The latter covers only the items listed. Fine arts policies, typically “all risk,” describe the circumstances under which losses are not covered. These are known as exclusions. Standard exclusions include: acts of war, nuclear reaction, vermin, inherent vice (a weakness in construction or an unremitting deterioration in an object), ordinary wear and tear, insurrection, rebellion, government seizure, perils of customs quarantine, and illegal transportation. Exclusions may affect the loan of objects. A common exclusion in named perils is termed “lost in inventory” or a “mysterious” disappearance. Museums may wish to add coverage for “mysterious” disappearance, but this may be contingent upon how current their inventory records are. Insurance companies do not want to insure for losses that may have occurred years ago.[4] Other common exclusions for which museums may desire coverage are breakage, employee dishonesty, or changes in temperature, heat, or humidity. Many exclusions are negotiable for a named perils policy and are not specified in an all-risks policy. In some situations, however, such as low security, a high incidence of loss, or a lack of environmental control, the cost of coverage for certain exclusions may be prohibitive. A policy called Differences in Conditions (DIC) may be added as supplemental inland marine insurance to provide extended coverage. This fills in gaps and offers coverage for risks such as floods and earthquakes.

Special attention should be paid to any warranties outlined in insurance policies. Violation of these specifically listed requirements, which might involve security or collections care, could void the policy.

The terms “wall to wall,” “nail to nail,” or “door to door” coverage applies to objects on loan, from removal at one location to installation at another location, including transit. Owners of items on loan and temporary borrowers of objects may be added to existing insurance policies as “additional insured.” On an all-risk collection policy, lenders are insured automatically as an added-insured, whereas in a named perils policy and in an ordinary fire policy the institution has to make a specific request (and sometimes is charged an additional amount) to add a new insured to its policy.

One element of insurance policies that is flexible is the amount assigned to deductibles. This is an amount that the insured agrees to pay before a claim is made for insurance. Generally speaking, the higher the deductible, the lower the premium. If a loss is fairly low, the insured may prefer to pay the loss rather than to file a claim, in order to maintain a low loss record and, therefore, keep lower premiums. Insurance policies often limit payment to an amount not paid by any other insurance company. The insured may have more than one policy but cannot collect the same amount twice for the same loss. If there are two insurance companies covering the same piece of property, each will pay its portion of a loss. Also, it's normal for an all-risks policy to waive any deductibles that apply to loss to an object that you borrow from others. Normally, the borrower provides insurance, but when lending objects, a museum often signs a waiver of subrogation. This tells the borrowing institution that the lender's insurance company will not sue the borrower's company in order to recoup expenses from a loss.[5] This agreement must be signed prior to the loan.

If an item is totally destroyed and the insured receives full value for it, the item then belongs to the insurance company. Some policies will allow a buy-back by the insured. If part of a set of items is destroyed, the insured may be able to give up the rest of the set and receive full value.

Some collecting institutions do not insure collections at all. The premise is that the items are irreplaceable, and if they are lost, there is no possible recovery. However, in the face of a major catastrophe, it might help an organization to have the ability to purchase other items that would help to tell its story. Also, funds from an insurance claim might help to repair damaged items. In addition, there is the question of fiduciary responsibility. The law requires that non-profit board members exercise the same care as a prudent person would do in the same circumstance. Of course, a board might decide that for its situation, it would be more prudent to allocate funds for the care and protection of collections rather than to spend money for insurance. As Marie Malaro points out in *A Legal Primer on Managing Museum Collections,* the important thing is not the decision to insure or not to insure, but that the board study the matter and make a good-faith effort to make an informed choice. When an organization loans its collection materials, it has less control over their security. Therefore, carrying insurance on loans may seem the most prudent course. Also, when the museum borrows objects that are owned by others, it may be required to carry insurance on objects loaned to it.

Self-insurance is another option. By this means, an organization sets aside funds to cover a potential loss. The problem that can arise in this case is that there is always the temptation to reallocate the funds to meet other needs. Then, if a disaster occurs, the funds are not available to cover the loss.

Liability Insurance

Liability insurance covers a third party for bodily injury or property damage due to your negligence. Both personal injury and property damage may be covered in a package. We live in a litigious society. In the commercial world, most litigation involves employment practices, and this type of lawsuit is becoming more and more prevalent in the nonprofit world as well. In some cases insurance to protect against these actions is required, and in others it may be highly desirable. The National Council on Compensation Insurance (NCCI) is an advisory board for insurance companies. It establishes and maintains NCCI forms that are used in liability insurance.

Any organization that is a place of public accommodation, open to the public on a regular basis, should have a Commercial General Liability (CGL) policy. These policies provide for coverage for claims of bodily injury or damage to tangible property and arise from an “occurrence” as defined in the policy. Typically, an occurrence is defined as an accident, which cannot be expected or intended.[7] The CGL policy is the primary insurance that covers any kind of injury to the public. It can be extended to cover employees, as well. In addition to the primary coverage, an organization might want to add medical payments insurance. This insurance would provide coverage if there was an accident in which the institution was not liable but wanted to pay the medical bills. There are a number of kinds of coverage that can be added on to the general liability policy. One supplement is the “broad form endorsement.” This adds coverage for exposures such as blanket contractual liability coverage; non-owned watercraft coverage; coverage for libel, slander, and other personal injury offenses; host liquor liability coverage; limited worldwide coverage; and others that may not be included in a general liability policy. If an insurance company does not wish to cover to the limits desired, an additional umbrella policy or excess policy can provide an additional layer of coverage. This policy should be as broad as or broader than the primary policy, and the dates of inception and termination should correspond with the primary policy. Once you have a primary policy, the costs of increasing limits are modest.[8] The policy may be based on an “occurrence” or on a “claims made” basis. Look into which would be better for your organization.

In most states, organizations with any part-time or full-time employees must pay worker's compensation, which provides liability coverage for injury to employees. This is regulated by state compensation acts. Federal employees are covered by the Federal Employees Compensation Act. Workman's compensation insurance is based on the premise that workplace accidents are the responsibility of the employer. If an employee is injured at work, he or she will receive payment for some period of weeks according to a fixed schedule. The employee files a claim to get the benefits and may also go to court if there is a dispute.[9]

An organization also may buy coverage on its liability policy on an “if any” basis to cover independent contractors. There is an increasing practice of outsourcing tasks such as

Web site design, computerization, exhibit development, and digitization of collections to independent contractors. One should be aware that the Internal Revenue Service looks closely at the classification of independent contractors because some organizations use it to avoid paying employee benefits. Some of the factors that determine if a person is an employee or an independent contractor are: whether the task is ongoing or short term, whether the person works at home or at the organization, whether the person works exclusively for the organization or for additional agencies, and who supplies the tools and equipment. The IHA has more information on determining if a person is an employee or an independent contractor.

An organization with paid staff may want to purchase an Employment Practices Liability Insurance (EPLI) policy. While this coverage may be provided in CGL insurance, many CGL policies have an employment practices exclusion. Employment practices insurance would cover alleged wrongful acts of: discrimination in the workplace; sexual harassment; wrongful discharge; breach of employment contract; violation of state laws, including defamation; invasion of privacy; intentional infliction of emotional distress; failure to promote; wrongful discipline; failure to grant tenure; retaliation; and various forms of negligent supervision or management. Be aware of exclusions, which vary widely. Also, it is advisable to get a policy that includes “prior act” coverage. Before contracting for this type of insurance, the carrier will expect to examine personnel policies and handbooks, training programs, and other human resource compliances.[10]

States vary on definitions of “employee.” Know your state laws in this regard. A person who receives “compensation,” for instance, may be considered an employee, not a volunteer. Compensation may not necessarily be monetary. The degree of control the organization has over a volunteer in soliciting his or her performance, in training, and in supervision may create a quasi-employee relationship, making the institution liable for the volunteer's actions.[11]

As noted above, a package policy may be utilized to provide both liability coverage and insurance for collections, especially in smaller local history institutions for which fine arts insurance may not be appropriate. A package policy also is often utilized to cover tangible property such as office equipment that is not part of the collections. It may be possible for a small organization to use a package policy to cover all property and liability insurance needs, thereby lowering the premium cost.

One of the most important kinds of liability coverage for nonprofits is Directors' and Officers' (D&O) insurance. This insurance can cover the organization and its trustees, officers, employees, committee members, and volunteers against financial loss including judgments, out-of-court settlements, and defense costs. A wide assortment of wrongful acts can be covered, including: mismanagement of funds or assets, inefficient administration, personal injury, and publisher's liability. Some D&O policies include coverage for employment-related claims, which would negate the need to have an EPLI policy.

Directors' and officers' liability insurance guarantees that the personal financial assets of the organization's trustees will not be unduly jeopardized by their service on the board. Some nonprofit organizations have found it difficult to attract people to serve on their boards unless the organization has D&O insurance. Although some states, including Illinois, indemnify board members of nonprofit organizations from personal lawsuits unless there is “willful and wanton” conduct, the statute may never have been tested in court. Also, even if the case is won, there may be attorney's fees involved in defending it. As John Mahoney points out in “The ABCs of D & O,” many nonprofit organizations choose a policy that includes a duty-to-defend option, which means that the insurance company will pay the legal fees even if the allegations are groundless or false.[12]

Members of the American Alliance of Museums (AAM) can get discounted D&O insurance through an AAM affinity program. The AAM Web site also lists insurance carriers that specialize in insurance for museums. *The Official Museum Directory* is another resource that lists insurance carriers covering both property and liability. The Internet can provide information about individual insurance companies with cultural institution policies.

Other Insurance

You can get insurance to cover almost any risk. Depending on the particular situation, one might want to consider some of the following. Boilers and air conditioners are not usually covered by general liability, but they might be added. Coverage should include repair or replacement without deduction for depreciation. This insurance might be tied to business interruption insurance, a type of insurance that covers loss of income as the result of an institution's being forced to close for an extended period of time. A major storm, for instance, could knock out electricity for days, or even weeks, in some areas.

In this technological age, computer insurance may be a desirable option. It can cover hardware, software, and even losses from computer viruses. One also can insure for plate glass breakage and for the loss of many specific types of equipment. Accounts receivable insurance would cover an organization's accounts and membership records if the records were destroyed. Bonding of employees and volunteers who handle money may be desirable, especially if one's fine arts policy has an Employee Dishonesty exclusion. (Unfortunately, the most common kind of theft is insider theft.) Organizations that distribute or sell food probably should be covered by products liability insurance. Key person life insurance covers the financial loss resulting from the death of an organization’s key person.

Groups that serve liquor need host liability or liquor liability coverage. Host liquor liability can be added to a CGL policy if the liquor is free. A separate liquor liability policy will be needed if the liquor is sold. State or municipal codes may require special insurance or a liquor license. Dramshop insurance may be required. This is an area in which to be especially cautious to make sure that all regulations are followed.

Automobiles owned by an organization need to be specifically insured for liability and other required insurance. Non-owned automobiles used by employees on company business need separate insurance coverage. If the organization is involved in renting vehicles such as trucks, vans, or buses, insurance is also a factor. Organizations that hold large events can get event cancellation insurance. This is very expensive insurance and applies to events generating large amounts of income.

Other property insurance could cover sprinkler leakage, loss of trees and shrubs, replacement of architectural elements, or personal property of employees and volunteers. Additional liability insurance could cover false arrest, contractual liability, checkroom liability, elevators or escalators, or even kidnap-ransom.

The need for insurance cannot be entirely eliminated, but the more that can be done in the area of risk management to mitigate the perceived risks; the less insurance will be needed. As noted in part one of this insert, in evaluating risks that might need to be insured, three key factors should be considered: 1) loss of event history (threats or hazards potentially affecting the institution); 2) loss event probability (the likelihood or probability of potential threats becoming loss events); 3) loss event criticality (the expected impact or effect on the organization if a loss should occur). Each organization needs to analyze its own possible hazards, evaluate the potential for them to cause a loss, and decide how serious the consequences would be. Insurance can then be tailored to meet the particular circumstances and needs of the individual organization.

Notes

1. Marylee MacDonald, "filling the Old-House Insurance Gap," *Old House Journal*, July-August 1994, 55.
2. Ibid., 52.
3. Rebecca A. Buck and Jean Allman Gilmore, eds., *The New Museum Registration Methods* (Washington, DC: American Association of Museums, 1998), 239-41.
4. Ibid., 242.
5. Ibid., 243-44.
6. Marie Malaro, *A Legal Primer on Managing Museum Collections* (Washington, DC: Smithsonian Institution Press, 1998), 419-20.
7. Joseph P. Monteleone, "Coverage Issues under Commercial General Liability and Directors' and Officers' Liability Policies," *Western New England Law Review*, submitted by Alan D. Ullberg to *ALI-ABA Course of Study: Legal Problems of Museum Administration*, Cosponsored with cooperation of the American Association of Museums, March 27-29, 1996, Pittsburgh, PA (Philadelphia, PA: American Law Institute-American Bar Association, 1996), 393.
8. Arthur Flitner, "An Insurance Primer for the Local Historical Organization," *Local History Notebook* 2, no. 4 (Sept.-Oct. 1986): 7.
9. Marilyn Phelan, *Museums and the Law* (Nashville: American Association for State and Local History, 1982), 59.
10. Lisa Bolens, "Employment Practices Liability Insurance—Is It for You?" *Journal of Property Management* 65, no. 3 (May 2000): 105-5.
11. Phelan, *Museums and the Law*, 62-63.
12. John Mahoney, "The ABCs of D & O (Directors and Officers Liability)," *Association Management* 48, no. 1 (Jan. 1996): L60 (2).

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Resources

American Alliance of Museums
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Huntington T. Block Insurance Agency, Inc.
2001 K Street, NW, Suite 625 North, Washington, DC 20006
(855) 219-3189 https://www.huntingtontblock.com/Coverages/Fine-Art-Insurance

National Council on Compensation Insurance
(800) 622-4123 www.ncci.com/ncciweb

National Trust for Historic Preservation
2600 Virginia Avenue NW, Suite 1100 Washington, DC 20037
(800) 944-6847 https://savingplaces.org/

A.M. Best Company
(908) 439-2200 https://web.ambest.com/home

Moody's Investor's Service
600 N Pearl Street, Suite 2165, Dallas, TX 75201
(212) 553-1653 www.moodys.com

Standard and Poor's S & P Ratings
(877) 772-5436 www.spglobal.com

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