

# Are You at Risk Serving on a Board of Directors?

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Successful businesspeople are often in demand to serve on business and community boards. These same businesspeople may also serve in senior management positions for firms that have an active board of directors. Whether

the board of directors you serve on is a “not-for-profit” (such as your homeowners’ association or a local charity) or a “for profit” private or publically traded company, you could be at risk. Directors and Officers Liability, also known as D&O, covers directors and officers against loss, damages and defense costs in the event of a claim arising out of their conduct or capacity as directors or officers. Coverage is also provided to the corporation for reimbursement of payments it is legally obligated or permitted to make in indemnifying the directors and officers. Common claims allege: Harassment, Wrongful termination, Discrimination and Errors and omissions of Directors and Officers.

Although an Errors and Omissions or Professional Liability policy is intended to cover claims of financial loss for negligence in providing professional services to others, D&O is intended to cover claims of financial loss for negligence in managing the business affairs of the company.

For instance, an architect may be sued for errors and omissions for faulty design of a building. That same architectural firm’s directors and officers and the firm itself could be sued for “tortious interference,” intentional

interference with contractual relations, if it backs out of a proposed acquisition of a competitor during final negotiations. D&O, not Professional Liability, would address the second case.

Lawsuits against public and private companies can come from competitors, government entities, customers, suppliers or vendors, and if the company has privately issued shares of stock, from investors or shareholders. Family members are even turning to the courts when they feel their interests are not being met. Each of these parties can bring a lawsuit alleging financial loss due to negligence that is not covered by an Errors and Omissions policy, but requires D&O.

As the variety of litigation has evolved, so has the cost to defend against such litigations. Attorney’s fees alone may run into the hundreds of thousands of dollars, and that’s just for lawsuits that are settled or dismissed early. It’s not actually doing something wrong that can result in litigation; it’s simply an allegation that will trigger the start of costly attorney fees.

Individuals are often unaware of the potential personal liability they assume when serving on uninsured boards.

Lending your name as a Director and not attending any meetings has always been risky. Today it could well be catastrophic.

*Note: References derived from the Insurance Journal.*