



Probus Centre - Canada, Inc.

(Office of the President)

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MEMORANDUM

TO: Probus Clubs in Canada
FROM: Gordon Springate, President
DATE: May 7, 2010

RE: DIRECTORS & OFFICERS LIABILITY INSURANCE

Over this past year there have been a number of Probus Clubs who have expressed concern over the lack of protection provided for the Officers and Directors (Management Committee) of local Probus Clubs in the event of some form of action being taken, for whatever reason, against the leaders of the Club by their own members. As you are aware, Probus Canada does provide, as part of your annual remittance, third party Liability Insurance to protect your Club and you as individual Members should an action be taken against you by an outside party for some incident during your regular ongoing activities. (Damage to property, etc.)

In our efforts to develop an affordable Directors and Officers policy for those local Probus Clubs who feel there is a need for this coverage, as not all do, we have explored this matter with our insurance carrier (Co-operators) and after some considerable deliberations the current proposal that has been presented to us is as follows:

“If Co-operators can get commitments of participation from a number of Probus Clubs (a minimum of eighteen) we would be able to provide the standard coverage through our corporate account and the annual premium for most Clubs would be approximately five hundred dollars (\$500), and with a very large club the annual premium would be approximately seven hundred and fifty dollars (\$750). If there is not sufficient interest (18 Clubs) then each Club could purchase the coverage locally, outside of Probus Centre Canada involvement, for a premium of approximately one thousand dollars (\$1000).

In most cases the D&O insurance is really only useful if you are dealing with any employees or fund raising activities. I know that many clubs (as other non-profits we insure) just feel better with this added protection. I have added a description of what and why you would have this coverage. Also remember, that if the individual Directors and Officers have personal liability (usually home or condo insurance) it is also added protection.”

Attached to this memo you will find a two page information sheet provided by our insurers and for a review of a full standard Directors and Officers Liability Policy, please go to the Probus Centre-Canada website (www.probus.org) and when you get to the Probus Canada page look under **PROBUS FORMS** and click “Sample Directors & Officers Liability Policy”.

If you have an interest or desire to pursue the establishment of this protection for your Probus Club, and have perused the mentioned forms, please contact our Co-operators agent, **Mr. Gary Laakso** at the following toll free number (**1 877- 870-1888**) to express your interest and seek any further answers to your questions. Needless to say, there has to be a time limit to determine whether or not there will be sufficient interest to establish a group policy, so contact must be made by **July 30, 2010** and if there is not sufficient interest for group coverage, Clubs will still be able to contact their local insurance agency to arrange their own coverage.

Sincere best regards,

Original signed by President Gordon Springate

Gordon Springate, President

Directors & Officers Liability

What is Directors & Officers Liability?

Directors & Officers Liability (D&O) is the unlimited personal liability assumed by an individual solely due to their position within the organization.

The main responsibilities of a Director or Officer are to represent the interests of the organization's members in a prudent manner and to direct the organization's business and affairs according to applicable laws and regulations.

In performing their responsibilities, there are basic duties Directors and Officers must adhere to:

- Duty of Diligence
- Duty of Honesty
- Duty of Loyalty
- Duty of Obedience
- Duty of Skill

Who is at risk?

Any organization that has a board of directors has an exposure. This includes, but is not limited to: charity groups, religious organizations, educational institutions, sports clubs, community associations, cultural groups, family-owned businesses, privately-held companies.

Who may claim?

Potential claimants against Directors and Officers include: The Company, Shareholders, Employees, Creditors, Regulatory bodies, Liquidators / Receivers, Members, Contributors, General Public.

Policy Highlights

Directors & Officers Liability for Privately-Held Corporation

Covers Directors and Officers of for-profit corporations for their personal liability (potentially unlimited).

Non-Profit Directors & Officers Liability

Covers the individual board members, individually or collectively, and provides reimbursement to the Corporation in the event that the Corporation is required to indemnify the Directors and Officers.

Non-Profit Professional Indemnity

Provides coverage to the individual board members and the entity for D&O type losses. This policy also provides incidental E&O coverage for non-profit organizations.

Policy Options

D&O	ND&O	NPPI	
•	•		Full retroactive coverage (back to incorporation)
		•	Full retroactive coverage (back to incorporation) for the Directors and Officers – retroactive date is applied for the E&O coverage
•	•	•	Discovery Period available (bi-lateral)
•	•	•	Pure financial loss coverage
		•	Incidental E&O coverage provided to respond to administrative errors and omissions during the course of operations
•	•	•	Claim includes written demands for monetary or non-monetary relief
•	•		All Directors & Officers are covered – past, present and future
		•	Coverage provided for the Non-Profit organization, its directors and officers as well as all employees
•	•		Reimbursement coverage available for the corporation
•	•	•	Spousal coverage
•	•	•	Penal Defence coverage – \$100,000 sub-limit
•	•	•	Wrongful Dismissal extension available

D&O Claims Examples

Charitable Organizations

One of the Directors of a national charitable organization donated a large amount of the charity's funds to help fund a political party's election campaign. The Director was criminally charged with misappropriation of funds. The other Directors were sued on the grounds that they did not exhibit enough control over the actions of the other director.

Community College

The school became bankrupt due to declining revenues. A number of claims were presented by banks, creditors, employees and parents for reimbursement of prepaid enrollment.

Even though most claims were brought against the school, the Directors were held personally liable for the claims of unpaid wages, wrongful dismissal and prepaid enrollment. Due to the number of plaintiffs, the legal fees were significant.

For-Profit Company

A business was sold for less than the fair market value and a claim was filed against the Directors for breach of fiduciary duty.

Government Funded Agency

A government-funded agency failed to grant monies as instructed by the government. Its Directors failed to record financial transactions and submitted unaudited financial statements. As a result, the agency was declared bankrupt. The Directors were presented with claims by the government, suppliers and creditors for mismanagement of funds.

E&O Claims Examples

Appraiser

The Insured was sued by his client, who was forced to sell a building to the tenant at less than the market value. An agreement gave the tenant the right to buy at the appraised value. The court found that the appraiser underestimated the value of the building.

Public Relations

The Insured produced advertising literature for a client. After all the copies had been printed, an error was discovered. A claim was made for additional costs incurred for reprinting.

Publishers

The Insured failed to amend an insert to a magazine advertisement leading to incorrect details being printed. The client is claiming for loss of profit.

Search Agents

The Insured carried out a search and advised their client that there was no reason why they should not use their proposed name. Subsequently, a company with a similar name issued an injunction.

Travel Agents

The Insured failed to adhere to an agreed time period for pre-booking their clients' airline tickets. The clients have incurred increased costs in obtaining the tickets.

- Applications for all products are available in the [Printable Forms Library \(Commercial\)](#) on the Co-operators' Intranet site.
- Upon binding and prior to policy issuance, we require confirmation of payment within 7 days.
- Renewal declarations will not be released unless requested documentation is received in full. Lapsed policies are not eligible for reinstatement.