

WHAT IS DIRECTORS & OFFICERS LIABILITY COVERAGE?

D&O IS WRITTEN TO:

- Protect the personal assets of a company's directors and officers;
- Protect the company's assets;
- Provide reimbursement to the organization to indemnify D&O's for their losses; and
- Help the company monitor and provide defense costs associated with responding to lawsuits and investigations.

WHY PRIVATE COMPANIES SHOULD CONSIDER BUYING D&O LIABILITY COVERAGE?

- Cost of defending corporate lawsuits may exceed the net worth of most private companies;
- Judgments can be financially crippling;
- Corporate indemnification may not be available;
- Adverse shareholders and other potential claimants may exist;
- Bad business decisions are likely to be more visible due to small business environment thus attracting the attention of shareholders, regulators and others;
- Business decisions made by D&O's can quickly impact the finances and operations of a company;
- D&O's work in demanding environments as they cover more corporate duties;
- Unique conflicts of interest may exist due to complexity of responsibilities; and
- Companies will have a difficult time attracting qualified individuals to their Boards without D&O coverage.

CURRENT BUSINESS TRENDS POINT TO PURCHASING D&O COVERAGE

- Economic uncertainty;
- Access to adequate capital;
- Keeping up with technology;
- Internet growth;
- Protecting intellectual property assets; and
- Retaining qualified workers.

WHAT ARE THE SOURCES OF D&O CLAIMS?

- **Shareholders, Investors, Partners and Members:**
 - Merger / Acquisitions
 - Financial performance
 - Executive compensation
 - Stock or other offerings
 - Conflict of interest
 - Bankruptcy
 - Inadequate / Inaccurate disclosure
 - Financial reporting
- **Customers, clients and consumer groups:**
 - Extension, refusal of credit
 - Debt collection
 - Deceptive trade practices
 - Contract dispute
 - Restraint of trade
 - Dishonesty
 - Cost, quality of product or service
 - Lender liability

- **Other third party claims against Directors and Officers (including competitors)**

- Anti-trust
- Copyright / patent infringement
- Business interference
- Competitor disputes
- Prospective company acquisition
- Company defamation
- Tax issues
- Regulatory / other government issues

DUTIES OF DIRECTORS AND OFFICERS

DUTY OF CARE:

Directors and officers are expected to perform their duties in good faith and at a level of professionalism they reasonably believe to be in the interest of the corporation and with the care that a reasonably prudent person in a similar situation would use under similar circumstances. The duty of care is a variable benchmark dependent upon the expertise, experience and background of each director and officer.

DUTY OF LOYALTY:

The duty of loyalty prohibits directors and officers from using their positions to further or enhance their private interests and requires them to refrain from engaging in personal activities which might injure the corporation. It requires an unselfish and undivided loyalty to the corporation and demands that there be no conflict between one's self interest and that owed to the entity. Directors and officers may not realize secret profits or unfair personal gain, may not abuse corporate authority, may not compete with the corporation to its detriment, and may not transact business with the corporation unless the director or officer can demonstrate that the transaction was fair and reasonable to the corporation.

DUTY OF OBEDIENCE:

Directors and officers are required to perform their duties in accordance with applicable statutes and the terms of the corporate charter. Directors and officers are not excused from their duties if they are unfamiliar with the laws governing their conduct. Frequently, directors and officers fail to observe traditional corporate formality, director and shareholder meetings may not be held, books and records not properly maintained and resolutions approving significant transactions may not be recorded.