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|  | **AN INSURANCE PRIMER FOR THE LOCAL HISTORICAL ORGANIZATION**  By Arthur L. Flitner  Local History Notebook, September / October 1986  The preservation of collections is such an important objective of most local historians that the use of insurance to help achieve that objective is probably apparent in every case. Less apparent, perhaps, is the historical organization's exposure to various other hazards, any of which may be a potential threat to the organization's existence. Yet many historical organizations may feel that they lack the expertise to identify their exposures to loss and select the appropriate insurance coverages. Accordingly, this article is an attempt to provide local historians with some practical guidelines on insurance and introduce them to the overall process called "risk management".  "Risk management" is a broader concept than insurance. It can be described as a five step process: (1) identification of exposures to loss, (2) consideration of the various techniques of protecting against the consequences of those losses, (3) selection of the most appropriate risk management techniques, (4) implementation of those techniques, and (5) monitoring the results of the chosen techniques to make sure that they remain efficient.  The various risk management techniques and an example of each are as follows:  *Exposure avoidance:* By deciding not to enter a float in the Founder's Day Parade, you avoid the possibility of becoming liable for injury to others arising out of the operation of the float.  *Loss prevention:* To prevent burglars from entering your building, you install iron bars on all windows and doors.  *Loss reduction:* To reduce the damage that will be done by a fire once it starts in your building, you install a fire detection system.  *Segregation of exposure units:* By dividing your collection between two locations, you eliminate the possibility that a single fire will destroy your entire collection.  *Contractual transfer:* You lease one of your historic buildings to another organization under an agreement that requires that organization to assume responsibility for any damage to the building.,  *Retention of exposure:* You decide not to buy insurance for your collection. You put the resulting savings into a reserve fund to pay for losses that might occur.  *Insurance:* You pay $1,000 to XYZ Insurance Company in return for its promise to pay for specified liability claims made against you during the coming year.  As you can see, insurance is only one of various risk management techniques. However, apart from total avoidance of an activity, it is the most certain way of escaping the consequences of loss. For organizations with limited resources, that kind of certainty may be essential to their survival. For example, an automatic sprinkler system greatly reduces the possibility that a fire could consume your entire building. But would your increased odds of surviving a fire be an adequate substitute for the certainty of having fire insurance just in case a substantial loss did occur?  As a practical matter, insurance will, in many cases, be the most feasible risk management technique, particularly for local historical organizations. So, the study of risk management is largely a study of insurance as far as the needs of local historians go. Nevertheless, it would be a mistake to ignore the broader aspects of risk management in handling the loss exposures of an historical organization.  The different steps in the risk management process--especially identifying loss exposures and monitoring the effectiveness of a risk management program are essential even if insurance is the only technique used. And, there are obvious benefits to using one or more of the noninsurance techniques in combination with insurance. A fire detection system and burglar alarm, for example, will not only reduce insurance rates in many cases but will reduce the chance that irreplaceable property will be destroyed or lost.  Consequently, the approach taken here emphasizes exposures to loss and corresponding insurance coverage’s. Noninsurance alternatives are mentioned incidentally.  **Property Exposures and Coverage**  Property exposures arise out of the fact that the historical organization owns or is otherwise responsible for loss to buildings, collections, and other personal property. "Personal property" is essentially property that is movable because it is not affixed to the realty; both the historical society's collection and its other movable belongings, such as office equipment, are personal property. The distinction between real property (i.e., buildings and other attached structures) and personal property is important because each class is ordinarily insured under separate provisions, for separate amounts of insurance, and sometimes even under separate policies. In fact, collections are usually insured separately from other personal property, as are money and securities.  **Buildings**  If the organization owns one or more buildings, it will obviously want to insure them against fire, windstorm, vandalism, and a host of other perils. The most thorough way of doing so is to request "all-risks" building coverage. "All-risks" does not mean that loss by any risk whatsoever is covered; it means that damage to the building by any fortuitous cause *other than those the policy excludes* will be covered. Most all-risks policies do not cover loss resulting from earthquake, flood, war, and certain perils. This does not mean that it is impossible to get coverage for the excluded perils. For example, flood insurance and earthquake insurance can be arranged under separate policies for an additional charge.  Still, the all-risks building policy is a good place to start. Look the policy over for its exclusions and limitations, and, if there are any excluded perils that you want to insure, ask your agent, broker, or insurance company if separate coverage can be arranged.  Be sure that the description of your property in the policy matches your actual holdings. If, for example, you have a carriage house behind your main museum building, the carriage house should either be described in the policy declarations sheet or the policy should have a clause that automatically extends the coverage on the main building to other structures on the premises. Similarly, if you acquire a new building during the policy period, it should be reported promptly to the insurance company.  An important point in arranging property coverage is the basis of valuation in the event of loss. Ordinarily, buildings are insured for either their "actual cash value" or their replacement cost. If a building is insured for actual cash value, the policyholder will be able to collect no more than what the building would cost to replace minus depreciation. In the case of a very old historic building that has not been well preserved, actual cash value could be far below the cost to reproduce the building. Replacement cost coverage, on the other hand, pays the actual cost of replacing the building, without any deduction for depreciation.  However, even replacement cost coverage will not pay for the sentimental or historical value of the building. If, because of its historical significance or physical uniqueness, a building is "irreplaceable;" the risk management process referred to earlier may come into play. An historical society may decide, for example, that it would rather settle for an actual cash value (ACV) policy and put the resulting premium savings (an ACV policy is less expensive than a replacement cost policy) into a fire detection system or other means of loss control.  In extreme cases, the decision might even be made to buy no building insurance at all. The savings might be put into both loss control and a fund for repairing the building should a loss occur. The latter decision is probably ill-advised for the small, privately funded institution, and is of course unacceptable if the property is subject to a mortgage agreement.  **Collections**  Collections are subject to all of the perils that buildings are, such as fire, theft, windstorm, etc. In addition, collections are commonly transported to other locations, whether for exhibitions, loans, or repairs. Consequently, collections may be damaged either while at or away from their regular location, by any number of perils, including the risks of transportation, such as breakage due to shifting of load or collision or overturn of the vehicle transporting them.  In many cases, the objects within a collection will be truly irreplaceable, and the value of insurance will be in question. As with historic buildings, some historical organizations may forego insurance, either wholly or in part, and spend the resulting savings on improved security and fire prevention measures. On the other hand, insurance on "irreplaceable" objects may be seen as a means of assuring that, if a loss should occur, the organization can recover an amount of money that will enable it to purchase other objects to replenish the collection.  If the decision is made to insure the collection, an all-risks form of protection is recommended. Moreover, coverage should be on a worldwide basis if there is any possibility that objects will be loaned or otherwise removed from their regular location.  An additional consideration is whether to insure the collection on a "schedule" or "blanket" basis. Schedule coverage only covers the particular objects that are specifically listed and described in the policy declarations. Blanket coverage provides an overall amount of insurance that would apply to the entire collection, without any requirement of scheduling.  Because schedule coverage is frequently used for insuring very valuable works of art, as well as certain valuable articles under homeowner policies, some insurance underwriters might feel that schedule coverage is more appropriate for collections than blanket coverage. Actually, schedule coverage should be avoided if at all possible. It is far more convenient to have a single blanket limit of insurance covering all objects in the collection than to have to list all objects in the collection, notify the insurer of all acquisitions during the policy period, and periodically update the values assigned to the various objects.  If an historical organization decides to insure only portions of its collection, the coverage can still be written on a blanket basis. However, the items on which no coverage is desired should be listed in an exclusionary endorsement to the policy. That approach is more likely to avoid the "coinsurance penalty" that may result if the entire collection is insured for an amount that is less than a stipulated percentage (often 80%) of the entire collection's value.  Historical organizations may also need to buy insurance on collections that they borrow. The actual requirements will ordinarily be spelled out in the loan agreement, and any such requirements should be carefully checked against the coverage that you may already have for borrowed collections or that you may acquire for that purpose. If, for example, the loan agreement requires you to provide all-risks coverage on the borrowed objects from the time they leave the lender's walls or shelves until returned there, your insurance should provide precisely that scope of coverage.  While most all-risks policies on collections cover theft of the collection by outsiders, they ordinarily exclude dishonest acts of employees or volunteers. To cover the excluded exposure you need what is called fidelity coverage. Naturally, many historical organizations may have complete confidence that they would never become victims to an "inside job." Still, the possibility should at least be considered and a conscious decision made to insure or not insure.  **Other Personal Property**  Most historical societies have personal property that is not part of the collection, such as office equipment, supplies, and perhaps sales merchandise if the society has a gift shop.  Coverage can be arranged on either the all-risks basis discussed earlier or for "specified perils." A specified perils policy actually names the perils that are covered--fire, lightning, windstorm, hail, vandalism, etc.--instead of excluding those that are not covered.  The best recommendation in many cases is again all-risks coverage, particularly if it does not exclude theft. Specified perils policies usually do not cover theft, requiring the policyholder to buy theft coverage under yet another form or policy if theft coverage is desired. Again, theft by an employee or volunteer ordinarily must be covered under separate fidelity coverage.  Most personal property policies flatly exclude loss of money or securities. While securities are probably not a widespread exposure among historical societies, money on the premises and in transit to bank premises may be. This is particularly likely if your organization charges admission, operates a gift shop, or holds fund-raisers. If insurance coverage is desired, it is written under a separate money form that covers virtually any type of accidental loss of money, subject to only a few exclusions.  The need for money coverage can be greatly lessened in many cases by using loss reduction techniques. For example, any time the amount of money on the premises exceeds a certain amount, an employee or volunteer can take it directly to a bank for deposit. That way, the exposure for any one loss will never exceed the maximum amount of money allowed on the premises, which could be as little as the amount of the deductible that would apply to money coverage if purchased.  Naturally, the above measure would not diminish the possibility that your organization could suffer money losses on many different occasions. That possibility demonstrates the need for monitoring loss experience to see whether the chosen risk management technique remains appropriate.  Finally, personal property policies do not cover damage to automobiles. Ordinarily any automobiles owned by the organization are insured through the same policy that covers automobile liability. However, antique autos that are part of the collections might be insured under the collections policy, depending on the underwriter's preference.  **Loss of Income**  If you have the types of insurance discussed so far and your insured building or collection is seriously damaged by a fire or other insured peril, your insurance company will pay for the direct loss to that property (i.e., either its actual cash value or its replacement cost, depending on which option you had chosen). But you could still suffer an additional loss in the form of lost income that you would otherwise have made had the fire not occurred. For example, while the building was being repaired or rebuilt you would not be able to receive any admissions, and if you had a museum shop you would not be able to make any sales. If loss of that income would threaten your organization's existence, you should consider the possibility of buying loss-of-income coverage, which can make up the income lost during the time that it would reasonably take to restore the property. In practice, loss-of-income coverage is seldom purchased by historical societies, but the loss exposure should at least be reviewed.  **Liability Exposures and Coverages**  Liability exposures result from the possibility that persons or organizations injured on the historical organization's premises or by its activities may have the right to recover damages from the organization. The right to recover will more likely than not be due to the organization's negligence, but could also be based on contractual or statutory grounds. Because of the potential severity of liability losses--judgments in excess of $100,000 are commonplace--few risk management alternatives to liability insurance exist for organizations the size of historical societies. In fact, some liability coverages, such as automobile and workers compensation, are actually required by law.  **General Liability**  General liability insurance covers your legal responsibility to pay damages to others because of bodily injury or property damage resulting from your activities, premises, or products. A notable exception is that general liability insurance does not cover the use of automobiles which are insured separately.  There are a number of other exclusions from coverage that need to be closely compared to your actual exposures. For example, some policies flatly exclude liability arising out of products or completed work. If your association has a gift shop, snack bar, or participates in projects to restore historic buildings, those exclusions would need to be eliminated in order to have the full scope of coverage needed for such activities. Similarly, liability for watercraft is excluded. If, for example, your association sponsors a canoe trip for its members, you could be without liability coverage for the event if additional coverage were not arranged.  A coverage supplement to the general liability policy that is worth considering is called the "broad form endorsement." This gives you a number of additional coverages, 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. Some general liability policies have these features built into them. But even the broad form endorsement is no assurance that your policy covers all of your exposures. A comparison of the policy's exclusions against your actual liability exposures is the only way to be assured of having the coverage you need.  There is no definitive answer to the question of how much liability insurance an historical society needs. Few would probably go with less than a $500,000 limit per occurrence. In some cases, the insurance company that provides the first one-half to one million dollars of coverage will not be willing to provide additional limits. Then, if higher coverage is needed, you will need to buy an "umbrella" or excess policy that provides an additional layer of coverage, ordinarily in increments of $1,000,000. If you buy an umbrella, you should make sure that the umbrella provides coverage that is as broad or broader than the primary policy. Also make sure that the inception and termination dates of the umbrella are the same as those of the primary policies.  In short, don't downplay the importance of high limits. The cost of increasing your limits is comparatively low. For example, if you increase your limit from $500,000 to $1,000,000, your cost for the additional $500,000 will only be a fraction of what the first $500,000 cost.  Beginning in 1986, many insurance companies will begin to offer general liability policies that pay on a "claims-made" basis, instead of the "occurrence" basis that has been standard in the past. If at all possible, avoid buying a claims-made general liability policy. The differences between the two bases of coverage are outside the scope of this article, but you should know that arranging claims-made coverage requires a high level of expertise and is, therefore, full of potential pitfalls and gaps in coverage. In comparison, arranging the traditional occurrence type policy is essentially foolproof.  **Automobile Liability**  If your association owns automobiles that are actually driven on the road, auto liability insurance (or other acceptable proof of financial responsibility) is actually required by Ohio law. The required limits under the Ohio law are very low and should not be used as a guide to how much coverage you need. Whatever limits you have selected for general liability coverage are a better guide. If you buy an umbrella liability policy, it will ordinarily provide the same limits of excess coverage over both your general liability and auto liability policies.  If your organization does not own any autos, it should nevertheless carry "hired and non-owned autos coverage". This protects the historical society in the event it rents an auto and injures a member of the public or if someone, such as a volunteer, runs an errand for the organization in his or her car and injures another person. Ordinarily, the driver's auto policy will protect the association as well, but there is always the possibility that the driver's coverage will be inadequate. Hired and non-owned auto coverage is usually inexpensive and is available as either a separate policy or as an endorsement to the general liability policy.  **Workers Compensation**  In Ohio and most other states, workers compensation insurance is mandatory for all employments. By carrying the required workers compensation coverage for its employees, an employer is made immune to suits by its employees for their on-the-job injuries. If the employer fails to carry workers compensation when required, it can become subject to fines, imprisonment, or both. Moreover, the employee is permitted to sue, and the employer loses the right to assert certain key defenses against the suit. In Ohio, workers compensation can only be obtained from the Bureau of Workers Compensation.  Those who are strictly volunteers (i.e., they receive no pay for their work) are not subject to workers compensation since they are not employees. If volunteers are injured through the negligence of the historical organization, they will be able to recover damages like any other member of the public, and such damages will ordinarily be payable under the organization's liability insurance.  There is also the possibility of injuries to volunteers in the course of their duties when the organization will not have been negligent and, therefore, has no actual legal liability to pay damages. In such cases, the insurance company has no obligation to pay damages either, yet the organization may feel a moral obligation to its volunteers even though there is no legal obligation. One way to provide for such cases is to carry medical payments coverage, which pays for injuries arising out of the policyholder's premises or activities regardless of whether the policyholder is legally liable. The limit of coverage is usually far less than that for liability insurance, but it does enable the policyholder to offer something when there is no legal liability to pay damages.  **Trustees Liability**  What might be called trustees liability insurance in the context of historical associations is actually an offshoot of directors and officers liability insurance. "D&O" coverage, as it's called, protects the directors and officers of a corporation against their liability for financial loss to the corporation resulting from their "wrongful acts" apart from dishonest or illegal acts. This kind of insurance is not to be confused with general liability insurance, which only protects against bodily injury or property damage to others, but not financial loss resulting from mismanagement. Directors and officers as well as trustees are ordinarily covered by the general liability policy, but only for bodily injury and property damage liability.  Because suits against directors and officers of corporations have become commonplace in the world of business, the coverage has become quite expensive if it is available at all. Unfortunately, the underwriters who price this coverage have failed to distinguish between the high likelihood of loss in the corporate setting and the low likelihood of loss in the historical society community. Consequently, the high pricing and limited availability of D&O coverage is almost universal.  The chances of a D&O type suit against the trustees of a local museum or historical organization are almost nonexistent. In a corporation, the stockholders (and others) have the standing to sue the directors and officers for their mismanagement. In an historical society, it is questionable whether anyone has the standing to sue the trustees for mismanagement, apart from the attorney general of the state in which the society is located. Another possibility, again a remote one, is a suit by a benefactor who feels that his or her contributions have been mismanaged.  While there is perhaps an arguable purpose for trustees of an historical society to have D&O coverage, it needs to be weighed against the cost. If the cost is so prohibitive as to hinder the organization's objectives, the wisdom of buying the coverage falls into doubt. Of course, some individuals, having heard the horror tales of corporate D&O suits, may decline to serve as trustees of the organization unless the coverage is in place. Obviously, the desired solution is to be able to obtain the coverage for a reasonable cost.  **Conclusion**  The foregoing remarks are only intended as an overview of the loss exposures faced by the local history organization and a survey of the corresponding insurance coverages and allied risk management alternatives. Although the objective is to increase the reader's understanding of the subject and his or her fluency in the language of insurance, the "little knowledge" so gained can be a dangerous thing without proper professional guidance.  Where can this professional guidance be obtained? First, there are many knowledgeable independent insurance agents or brokers. Some may possess proven experience insuring museums or historical organizations in your area, and communication with other such organizations may reveal the identity of such agents. Other agents may have had no experience insuring your kind of organization yet have the level of technical expertise that would enable them to do a thorough job. One step in the process would be to give the agent a tour of your facilities and carefully describe the different aspects of your operations. If the agent you select has passed the rigorous examinations and ethics requirements leading to the Chartered Property Casualty Underwriter designation, that is a good indication that you are dealing with a truly professional insurance person.  Another approach is to develop expertise in insurance and risk management within your organization. A lawyer or a business person with insurance background might be among your membership already and willing to consult with the trustees or even serve as one of them. This would not do away with the need for an insurance agent or broker, but it could provide greater assurance that proper arrangements are being made. Similarly, existing trustees, staff, or volunteers can increase their knowledge of risk management and insurance through formal or informal study. For formal study, many colleges and universities offer basic insurance courses. Moreover, numerous insurance and risk management degree programs that can be pursued through home study are available through the Insurance Institute of America. Other organizations offer seminars on insurance and risk management.  **Suggested Reading**  The following suggested readings are available through the Local History Office Lending Library.  *Insurance and Risk Management for Museums and Historical Societies*. Hamilton, New York: Gallery Association of New York, 1985.  Pfeffer, Irving and Ernest B. Uhr. "The Truth about Art Museum Insurance" *Museum News*, Vol. 52, No. 6, March 1974, pp. 23-31.  *Arthur Flitner is Associate Editor of "The Fire, Casualty and Surety Bulletins," a technical insurance publication of The National Underwriter Company, Cincinnati. He is a graduate of Ohio University and Eastern Michigan University and is a Chartered Property Casualty Underwriter. He has taught insurance at the University of Cincinnati and is coauthor of the book, "Commercial General Liability," which won the 1984 Research Excellence Award of the Society of Chartered Property Casualty Underwriters.* | |