



## Directors' & Officers' (D&O) Insurance

### What Farmers Market Organizations Should Know

A nonprofit organization is operated for the benefit of some group of persons. Those individuals, together with employees, creditors, customers, members, state regulators, etc. are all potential plaintiffs against the directors & officers of a nonprofit farmers market due to mismanagement or wrongful acts. The fundamental responsibility of directors & officers is to judiciously represent the interests of the organization's members and other constituencies in directing the business and affairs of the organization within the law. D&O insurance responds to protect a farmers market for the insured perils surrounding an allegation of a wrongful act. An important feature of a D&O insurance policy is defense costs coverage. The costs associated with defending an allegation of a wrongful act can easily and quickly exceed \$50,000.

**Here are a few examples of claim exposures that illustrate the need for insurance covering directors and officers of farmers market organizations:**

#### **Allegation of Wrongful Acts**

Conflict of interests

Fraudulent conduct, reports, financial statements or certificates

Breach of contract

Torts (A wrongful act in the absence of a contract)

Violation of a statute

Violation of provisions of articles or by-laws

Improper self-dealing (Acting in your own interest instead of the farmers market; for example, transactions with companies in which officers or directors are personally interested)

#### **Allegation of Financial Mismanagement**

Inefficient administration resulting in losses

Sale of assets for unreasonably low prices

Wasting of assets

Extension of credit where not warranted

Failure to ascertain whether extension of credit is warranted

#### **Allegation of Mistakes or Errors in Judgment**

False or misleading reports

Dissemination of false or misleading information

Permitting the organization to make improper guarantees

#### **Allegation of Negligence**

Continual absence from meetings

Failure to examine reports and documents before signing

Failure to detect and stop embezzlement of organizational funds

Failure to file annual report

Failure to require withholding tax

Failure to inspect organization books and records to keep abreast of its activities

Failure to supervise the activities of others in a proper manner

Failure to verify facts in official documents before signing them and filing them

Shirking responsibility

## Who Sues Nonprofit Farmers Markets & Their Boards and Why?

One of the myths associated with nonprofit farmers markets' Directors' & Officers' exposures is that there are few sources of claims since nonprofit farmers markets don't have shareholders. Nonprofits serve large and varied constituencies to which their boards owe specific fiduciary duties similar to duties owed by corporate boards. These constituencies are potential plaintiffs in legal actions brought against nonprofit boards. Potential claimants in a suit against nonprofit directors include:

### 1. Insiders

The current and former staff including volunteers of a nonprofit farmers market may bring actions alleging a host of wrongful acts, including wrongful termination, discrimination, sexual harassment, and Americans with Disabilities Act violations.

### 2. Outsiders

Third parties that have a relationship with the farmers market may allege harm caused by the nonprofit and/or its directors, officers or employees. Outside sources can be partnering organizations, city government, vendors, funders, or another nonprofit.

### 3. Directors

A nonprofit board member may sue another board member, or the organization itself, alleging violation of a duty owed to the nonprofit, such as a conflict of interest. A state attorney may determine wrongdoing has occurred, and compel those board members aware of the wrongdoing to file suit against the organization.

### 4. Beneficiaries

The people you are in business to help- your farmers and shoppers- may bring claims against directors and officers alleging wrongdoing. For example: if a farmers market does not require its vendors to carry product liability insurance and someone becomes injured or sick because of a vendor's product, the board could be sued for not making the vendor insurance mandatory.

### 5. Members

Directors and officers of membership associations are vulnerable to claims brought by members alleging harm to the interests of the members.

### 6. Donors

A nonprofit's contributors may sue directors and officers alleging misuse of a restricted gift or grant.

### 7. State Attorney General

In most states, the state attorney general represents the interests of the general public in assuring the proper management of public benefit corporations. As such, the Attorney General may bring a claim against an organization's directors and officers alleging wrongdoing.

### 8. Other Government Officials

Other government officials, including representatives of the U.S. Internal Revenue Service, the U.S. Department of Labor and the U. S. Department of Agriculture, may bring actions against farmers market directors alleging violation of state or federal laws.

Farmers Market Directors' & Officers' (D&O) Liability Insurance provides coverage against "wrongful acts" which might include actual or alleged errors, omissions, misleading statements, and neglect or breach of duty on the part of the board of directors.

Please read *Policy Highlights and Frequently Asked Questions about FMC's Member-Only Directors' & Officers' Insurance Program* to find answers to common questions about coverage scenarios.

*FMC is a 501(c)(3) representing farmers markets managers, farmers, state farmers market associations, and other organizations dedicated to helping farmers markets thrive in the long-term.*

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