

## Who Can Sue a Nonprofit Board?

One of the myths associated with nonprofit D&O exposures is that there are few sources of claims since nonprofits don't have shareholders. While it is true that the vast majority of lawsuits filed against nonprofit boards are filed by current and former employees (alleging wrongful employment practices), 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 of a nonprofit 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 nonprofit may allege harm caused by the nonprofit and/or its directors, officers or employees. Outside sources can be vendors, funders, or another nonprofit.
3. **The Entity** — The nonprofit may bring an action against its directors and officers. Examples include claims by current management against a former trustee. In some states, derivative suits are permitted. In a derivative suit, members of a nonprofit may bring a claim on the nonprofit's behalf against a director and officer. (Note: Claims by the entity against its directors and officers will likely be excluded under most nonprofit D&O policies).
4. **Directors** — A nonprofit director may sue another board member alleging violation of a duty owed to the nonprofit. Under certain circumstances such an action may be compelled.
5. **Beneficiaries** — The people you are in business to help — your service recipients — may bring claims against directors and officers alleging wrongdoing.
6. **Members** — Directors and officers of membership associations are vulnerable to claims brought by members alleging harm to the interests of the member.
7. **Donors** — A nonprofit's contributors may sue directors and officers alleging misuse of a restricted gift.
8. **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 nonprofit directors and officers alleging wrongdoing.

9. **Other Government Officials** — Other government officials, including representatives of the U.S. Internal Revenue Service and the U.S. Department of Labor, may bring actions against nonprofit directors alleging violation of state or federal laws.