

**THIS ENDORSEMENT CHANGES YOUR POLICY. PLEASE READ IT CAREFULLY.**

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## **NEW HAMPSHIRE NOT-FOR-PROFIT DIRECTORS AND OFFICERS LIABILITY COVERAGE**

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With respect to coverage provided by this endorsement, the provisions of the policy apply unless modified by the endorsement.

For an additional premium, this endorsement applies only if **NEW HAMPSHIRE NOT-FOR-PROFIT DIRECTORS AND OFFICERS LIABILITY COVERAGE** is shown in the Declarations.

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### **SCHEDULE OF REQUIRED UNDERLYING INSURANCE AND LIMITS**

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The following is added:

**Exposure: Not-For-Profit Directors And Officers Liability**

**Combined Single Limit: \$1,000,000**

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### **DEFINITIONS**

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5. *Damages* is deleted and replaced by the following:

5. *Damages* means the sum required to satisfy a *claim* covered by this policy, whether settled and agreed to in writing by us or resolved by judicial review. *Damages* include those amounts properly paid under Legal Services. However, *damages* does not include the cost of complying with any judgment or settlement of a *claim* for non-monetary relief.

The following Definitions are added:

1. *Claim* means:

a. A written demand for monetary relief; or

b. A civil, criminal, regulatory or administrative proceeding for monetary or non-monetary relief which is commenced by:

(1) Service of a complaint or similar pleading alleging a *wrongful act*;

(2) A return of a criminal indictment; or

(3) A receipt or filing of a notice of charges.

2. *Discrimination* means a violation of applicable employment discrimination law protecting any *employee* due to age, race, color, sex, religion, national origin, sexual orientation or preference, handicapped status or any other protected class or characteristic established by any federal, state or local statutes, rules or regulations.

3. *Employee* means any person while acting within the course and scope of his or her duties and responsibilities in the regular service of a *qualifying organization* whom the *qualifying organization* compensates by salary, wages and/or commissions and has the right to govern and direct in the performance of such service.

4. *Non-employment discrimination* means any actual or alleged *sexual harassment* or unlawful *discrimination*, or the violation of the civil rights of a person relating to such *sexual harassment* or *discrimination*, when such acts are alleged to be committed against anyone other than a director, officer, trustee, trustee emeritus, governor, *employee* or volunteer of a *qualifying organization*.

5. *Qualifying organization* means any not-for-profit organization qualifying for tax exempt status under Section 501(c)(3), (4) or (7) of the Internal Revenue Code of the United States, or *subsidiary* thereof, except:

- a. Organizations in operation for less than 1 year or for which IRS certification is pending;
  - b. Healthcare Organizations of any type or variety;
  - c. Secondary Education Organizations (including Colleges, Universities or any organization providing post-12<sup>th</sup> grade educational services), except Alumni Organizations;
  - d. Organizations which expended more than 75% of their annual revenue on fundraising and administrative costs in the year prior to inception of this policy; or
  - e. Organizations with total assets (inclusive of *subsidiaries*) greater than \$50,000,000 as stated in their most recent financial statement at inception of this policy.
6. *Sexual harassment* means unwelcome sexual advances, a direct or implied request for sexual favors or other conduct of a sexual nature that:
- a. Is made a condition of employment of any *employee*;
  - b. Is used as a basis for employment decisions;
  - c. Interferes with the performance of any *employee's* duties; or
  - d. Creates an intimidating, hostile or offensive working environment.
7. *Subsidiary* means any not-for-profit organization qualifying for tax exempt status under Section 501(c)(3), (4) or (7) of the Internal Revenue Code of the United States at the time of the alleged *wrongful act* that the *qualifying organization* owns more than 50% of the voting interest, either directly or indirectly through one or more of its *subsidiaries*, or has at the time of the alleged *wrongful act*, the right to elect or appoint more than 50% of the voting directors or officers, either directly or indirectly through one or more of its *subsidiaries*; and meets the other requirements of a *qualifying organization*.
8. *Wrongful act* means any actual or alleged negligent act, error or omission, misleading statement, or breach of duty committed by you in the performance of your duties as a director, officer, trustee, trustee emeritus or governor of a *qualifying organization*, or any matter claimed against you by reason of your status as such. *Wrongful act* includes:
- a. A *wrongful employment act*;
  - b. *Non-employment discrimination*;
  - c. Libel, slander, defamation or publication or utterance in violation of an individual's right of privacy;
  - d. Wrongful entry or eviction or other invasion of the right of occupancy;
  - e. False arrest or wrongful detention;
  - f. Violation of the Sherman Antitrust Act or similar federal, state, or local statutes or rules; and
  - g. Plagiarism, infringement of copyright or trademark or unauthorized use of title.
9. *Wrongful employment act* means actual or alleged employment-related:
- a. *Discrimination*;
  - b. *Sexual harassment*;
  - c. *Wrongful termination*;
  - d. Retaliation;
  - e. Wrongful failure to employ or promote;
  - f. Wrongful discipline;
  - g. Wrongful deprivation of career opportunity;
  - h. Wrongful demotion; or
  - i. Negligent *employee* evaluation, including the giving of negative or defamatory statements in connection with an *employee* reference.
10. *Wrongful termination* means violation of an *employee's* rights, other than rights based on an express, written or oral agreement of employment, when terminating an employment relationship.

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## NOT-FOR-PROFIT DIRECTORS AND OFFICERS LIABILITY COVERAGE

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1. We will pay *damages* you are legally required to pay arising out of a *claim* against you in your capacity as a director, officer, trustee, trustee emeritus or governor of a *qualifying organization* alleging a *wrongful act* to which this insurance applies.
2. This coverage applies only if:
  - a. The number of *qualifying organizations* of which you are a director, officer, trustee, trustee emeritus or governor does not exceed five (5) at the inception of the *policy period*;
  - b. The *claim* is made against you during the *policy period*; and
  - c. The *damages* are not indemnified by the *qualifying organization*.
3. All *wrongful acts* arising out of continuous, repeated or related *wrongful acts* shall be considered one *wrongful act* and shall be deemed to occur at the time of the first *wrongful act*.
4. Our total limit of liability for Not-For-Profit Directors And Officers Liability Coverage will not be more than:
  - a. The Annual Aggregate limit shown in the Declarations for the sum paid for all *damages* under this coverage during the *policy period*, regardless of the number of people, *wrongful acts* or *claims* made. Each payment made for *damages* will reduce the Annual Aggregate limit by the amount of the payment. This reduced limit will then be the amount available for any further *claims* for the remaining portion of the *policy period*. Payment for Legal Services reduces the Annual Aggregate limit.
  - b. Subject to the Annual Aggregate limit, the Each Wrongful Act limit shown in the Declarations is the most we will pay for all *damages* because of any *wrongful act* or series of related acts, regardless of the number of people, *wrongful acts* or *claims* made.

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## EXTRA BENEFITS

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1. **Legal Services** is deleted and replaced by the following:

1. **Legal Services**

- a. We will defend you against any suit seeking *damages* caused by a *wrongful act* to which this coverage applies. We will provide this defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. We may investigate and settle any *claim* or suit that we decide is appropriate.
- b. We will have the right, but not the duty, to defend you against any suit seeking *damages* covered by this policy if:
  - (1) The *wrongful act* is covered by *required underlying insurance* or any other collectible insurance; or
  - (2) *Required underlying insurance* is not maintained.
- c. We may join, at our expense, with you or any insurer providing *required underlying insurance* or any collectible insurance in the investigation, defense or settlement of any *claim* or suit which we believe may result in a *claim* under this policy. But we will not contribute to the costs and expenses incurred by an insurer providing *required underlying insurance* or any collectible insurance.
- d. In jurisdictions where we are prevented from defending you for a covered loss because of laws or other reasons, we will pay any expenses incurred with our prior consent for your defense.
- e. As part of our defense, investigation or settlement, we will also pay the following expenses:
  - (1) Expenses we incur and costs taxed against you in any suit we defend;
  - (2) Premiums on bonds required in a suit we defend, but not for bond amounts more than the limit of liability. We need not apply for or furnish any bond;
  - (3) Reasonable expenses incurred by you at our request, including actual loss of earnings (but not loss of other income) up to \$1,000 per day, for assisting us in the investigation or defense of a *claim* or suit;

- (4) Interest on the entire judgment which accrues after entry of the judgment and before we pay or tender, or deposit in court that part of the judgment which does not exceed the limit of liability that applies; and
  - (5) All prejudgment interest awarded against you on that part of the judgment we pay or offer to pay. We will not pay any prejudgment interest based on that period of time after we make an offer to pay the limit of liability that applies.
  - f. Our duty to settle or defend ends when:
    - (1) The Each Wrongful Act limit for any *wrongful act* or series of related acts has been exhausted by payment of a judgment or settlement; or
    - (2) The Annual Aggregate limit for all *wrongful acts* has been exhausted by payment of a judgment or settlement;whichever occurs sooner.
  - g. Payments made under Legal Services are part of and not in addition to either the Each Wrongful Act limit or Annual Aggregate limit shown in the Declarations.
2. **Private Consultation Coverage** is deleted.

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#### **DAMAGES WE DO NOT COVER**

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The following exclusions are added:

**1. Bodily Injury Or Property Damage**

We do not cover any *damages* arising out of *bodily injury* or *property damage*.

**2. Fines Or Penalties**

We do not cover any fines, penalties, taxes, punitive, exemplary or multiplied damages except where required by law.

**3. Uninsurable Losses**

We do not cover any matters that may be deemed uninsurable according to any federal, state, or local statute, regulation, ordinance or common law of the United States of America, its territories or possessions, or Puerto Rico.

**4. Breach Of Agreement**

We do not cover any *damages* arising out of the breach of an actual or implied written or oral agreement related to employment, including:

- a. Labor or grievance arbitration pursuant to a collective bargaining agreement; or
- b. Internal dispute resolution proceedings of the *qualifying organization*.

**5. Non-Monetary Relief**

We do not cover any claim or suit seeking non-monetary relief including, but not limited to injunctive relief, declaratory relief, job reinstatement, or other equitable remedies.

**6. Violations Of Laws Applicable To Employers**

We do not cover any *damages* arising out of any actual or alleged violation of any of the responsibilities, obligations or duties imposed by the Consolidated Omnibus Budget Reconciliation Act, Employment Retirement Income Security Act of 1974, Fair Labor Standards Act (except the Equal Pay Act), state wage payment and collection laws, Federal Insurance Contributions Act, Immigration Reform and Control Act of 1986, National Labor Relations Act, Occupational Safety and Health Act, Social Security Act, Workers' Adjustment and Retraining Notification Act, including any amendments to these laws, promulgated rules, or regulations or any provisions of any similar federal, state or local statute, regulation, ordinance or common law of the United States of America, its territories or possessions, or Puerto Rico.

## **7. Social Security Benefits**

We do not cover any *damages* arising out of any obligation under the Social Security Act including, but not limited to, any claim for lost or diminished Social Security benefits, including any amendments to that law, or any similar federal, state or local statute, regulation, ordinance or common law of the United States of America, its territories or possessions, or Puerto Rico.

## **8. IRS Assessments**

We do not cover any taxes or any penalties assessed by the Internal Revenue Service or similar state or local authority.

## **9. Performance Or Sales Of Investments**

We do not cover any *damages* arising out of the performance or non-performance, or the purchase or sales of any security, real estate investment or other investment.

## **10. Intellectual Property**

We do not cover any *damages* arising out of any allegation of misappropriation of patent, trade secret or any other intellectual property rights.

## **11. Specific Laws**

We do not cover any *damages* arising out of any alleged violations of the Alien Tort Claim Act or any other similar law whether statutory, regulatory or common law.

## **12. Government Entities**

We do not cover any *damages* arising out of any suit, action, investigation or proceeding by or on behalf of any governmental or quasi-governmental entity because of:

- a. An application for funds or grants from; or
- b. The use, disbursement or administration of funds or grants received from; any governmental or quasi-governmental entity.

## **13. Securities Laws**

We do not cover any *damages*

- a. The issuance, endorsement, or sale of bonds, or receipt or use of bond proceeds, whether such bonds are tax-exempt or not;
- b. Any violation of the Securities Act of 1933;
- c. Any violation of the Securities Exchange Act of 1934; or
- d. Any violation of any state blue sky or securities law;

including, with respect to **b.**, **c.** and **d.**, any amendments to these laws, promulgated rules, or regulations or any provisions of any similar federal, state or local statute, regulation, ordinance or common law of the United States of America, its territories or possessions, or Puerto Rico.

## **14. Pending Or Prior Claims**

We do not cover any *damages* arising out of:

- a. Litigation or administrative or regulatory proceeding or investigation of which you or a *qualifying organization* had notice, which was prior to or pending as of the inception date of this coverage; or
- b. Essentially the same facts as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation.

## **15. Prior Notice**

We do not cover any *damages* arising out of any facts alleged, or to the same or related *wrongful act* alleged, in any *claim* which has been reported, or in any circumstances of which notice has been given, under any insurance of you or the *qualifying organization* prior to the inception date of this coverage.

## **16. Malpractice**

We do not cover any *damages* arising out of any alleged medical or professional malpractice.

#### 17. Personal Profit

We do not cover your gaining of any personal profit or advantage to which you are not legally entitled, including but not limited to:

- a. Misappropriation;
- b. Commingling;
- c. Deduction; or
- d. Withholding;

of funds or other property.

#### 18. Qualifying Organization Or Director Claim

We do not cover any *damages* arising out of any suit or *claim* brought by, against or on the behalf of the *qualifying organization*, or any affiliate thereof, or brought by a director, officer, trustee, trustee emeritus or governor of the *qualifying organization*. No coverage is afforded to the *qualifying organization* and this policy does not provide any defense or pay any *claim* of the *qualifying organization*. This exclusion shall not apply to any derivative claim brought and maintained independently of the *qualifying organization* or you.

#### 19. Sponsor Developer

We do not cover any *damages* arising out of any *claim*:

- a. Brought by, against, or on behalf of the developer of the condominium units, cooperative corporation property or other real or personal property managed by the *qualifying organization*;
- b. Brought by or on behalf of the sponsor for conversion of the condominium units, cooperative corporation property or other real or personal property to cooperative or condominium ownership; or
- c. Which alleges or arises out of any alleged conflict of interest between the fiduciary responsibility of any member of the Board of the *qualifying organization* to the *qualifying organization* and their relationship with the sponsor or developer of the condominium units, cooperative corporation property or other real or personal property of the *qualifying organization*.

#### 20. Sexual Misconduct

We do not cover *damages* arising out of, or in any way involving, directly or indirectly, any alleged sexual misconduct, child abuse or neglect, including but not limited to the employment, supervision, reporting to the proper authorities, failure to so report or retention of any person. Sexual misconduct means any licentious, immoral or sexual behavior, sexual abuse, sexual assault, or molestation intended to lead to or culminating in any sexual act against any individual.

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#### CONDITIONS

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**8. Other Insurance** is deleted and replaced by the following:

##### **8. Other Insurance And Sources Of Indemnity Or Recovery**

The insurance provided by this endorsement is written in excess of any and all policies of insurance issued to the *qualifying organization* available to you, including but not limited to, the *required underlying insurance* and any directors and officers liability policies issued to such *qualifying organization*, as well as any other sources of defense, indemnity, coverage or recovery available to you, even if other than by insurance. The insurance provided by this endorsement shall not contribute with other such insurance or sources of indemnity, defense, coverage or recovery.

**13. Policy Period And Territory** is deleted and replaced by the following:

##### **13. Policy Period And Territory**

The *policy period* is stated in the Declarations. This coverage applies to a *wrongful act* which takes place anywhere in the world, but only if the *claim* is made and suit is brought for such *wrongful act* in the United States of America, its territories or possessions, or Puerto Rico.

**15. Maintenance Of Required Underlying Insurance And Limits** is deleted and replaced by the following:

**15. Maintenance Of Required Underlying Insurance And Limits**

- a. *Required underlying insurance* must be maintained at the limits shown in the Schedule Of Required Underlying Insurance And Limits and with no change to more restrictive conditions during the *policy period*. If *required underlying insurance* is not maintained at the limits shown in the Schedule Of Required Underlying Insurance And Limits, we will not be liable under this policy for more than we would have been liable if that *required underlying insurance* was in effect at the limits shown in the Schedule Of Required Underlying Insurance And Limits.
- b. This Condition also applies if *required underlying insurance* is maintained but not available to you for any reason, including but not limited to:
  - (1) The underlying insurer is bankrupt, insolvent or in receivership;
  - (2) You have breached the terms or conditions of that *required underlying insurance*; or
  - (3) The *claim* is not covered by the *required underlying insurance*.
- c. Subject to the preceding, if the limit of liability of *required underlying insurance* is reduced or exhausted by payments made thereunder, we will:
  - (1) In the event of reduction, pay excess of the remaining limits of *required underlying insurance*; or
  - (2) In the event of exhaustion, continue in force as *required underlying insurance*.