



SHARE

Webinar Series

Directors' and Officer's- How are you Managing Risk?

Speaker

Brian Laur, Director, Insurance Services, HSC

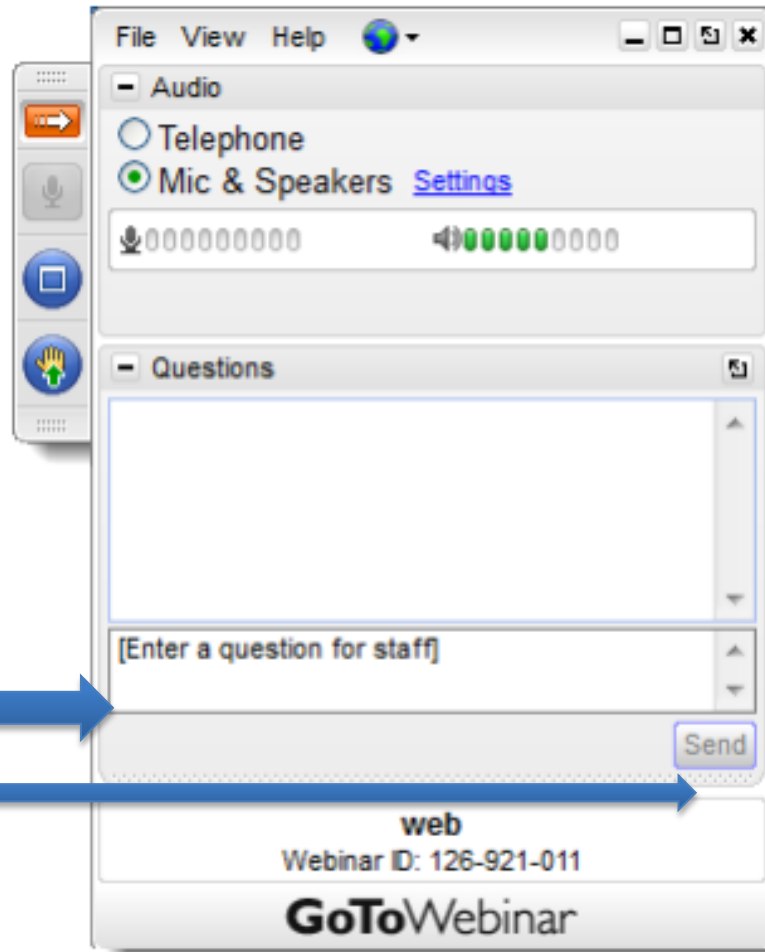
Nov 2, 2016

Questions?

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Speaker:



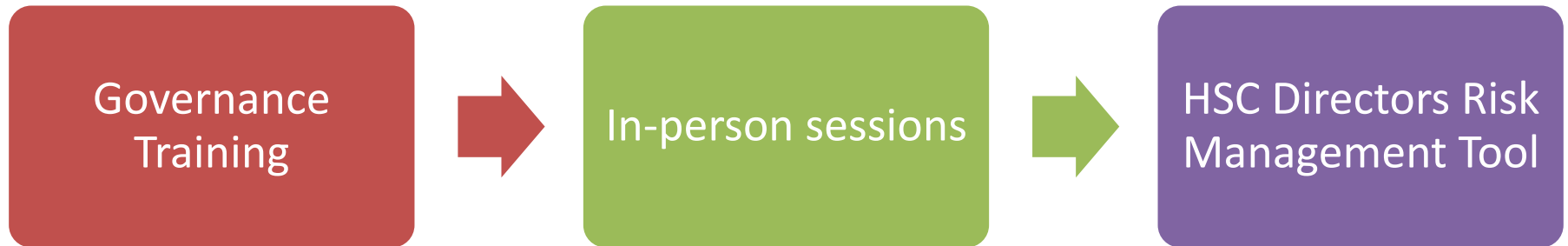
Brian Laur, Director, Insurance Services, HSC

About this Webinar

In this webinar you will learn about governance risk:

- Varying forms (i.e., principal vs. operational) and nature of housing provider risks
- Director's Social Housing Providers- potential liability issues
- Actions that can be taken by Directors to become more aware of the issues during the course of their governing mandate
- Value of Board indemnity and liability insurance
- Building governance capacity

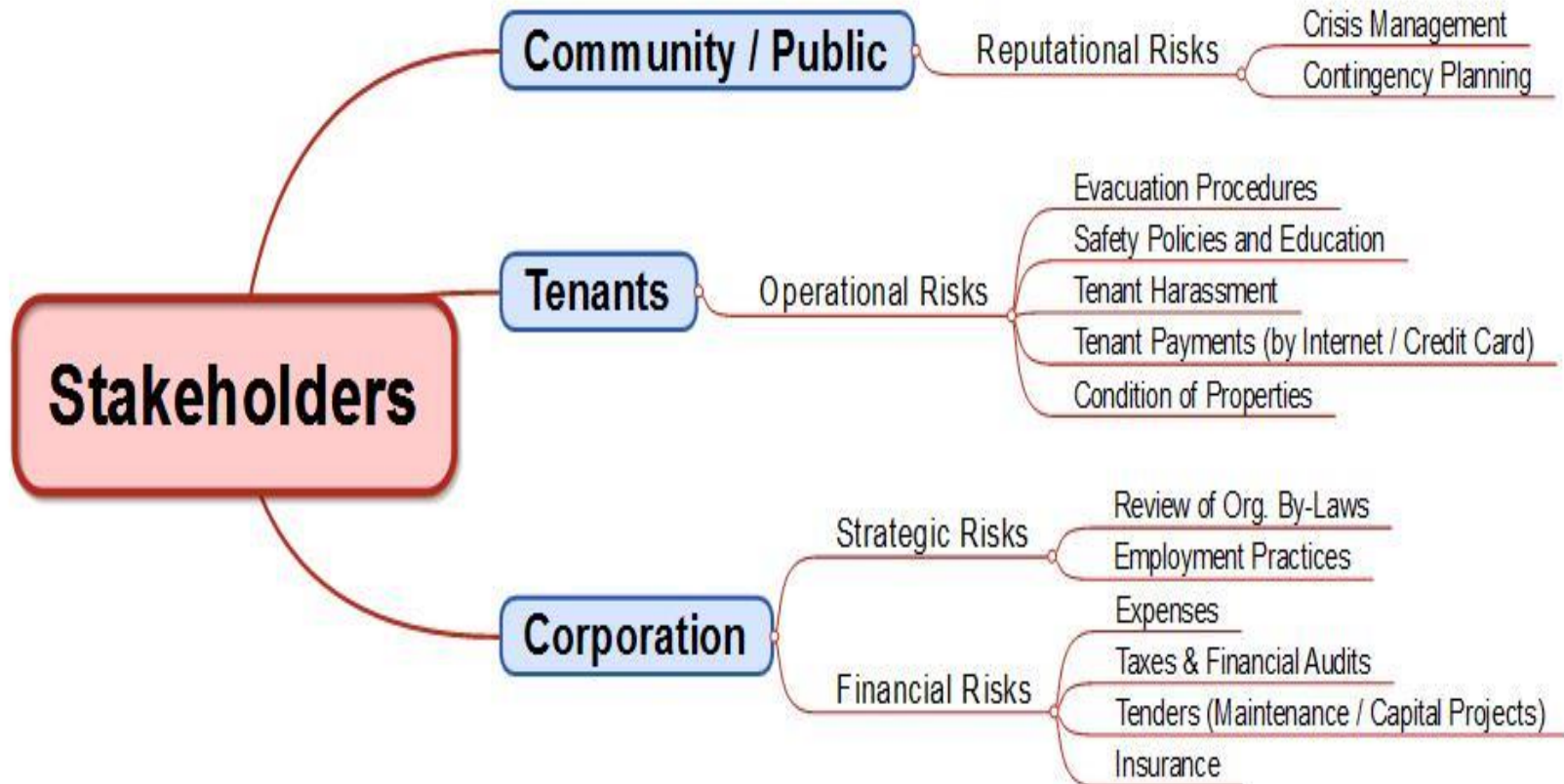
HSC Insurance and Risk Management



Governance essentials

- Fiduciary duties/duty of care “duty of loyalty”
- The risks posed when fiduciary duties are overlooked
- Real, potential and perceived Conflicts of Interest
- Sources of funding
- Organizational structures
- The legal framework in which the organization operates
- The Board and Committees in the policy framework

Key Stakeholders and Risk



Forms of Risk

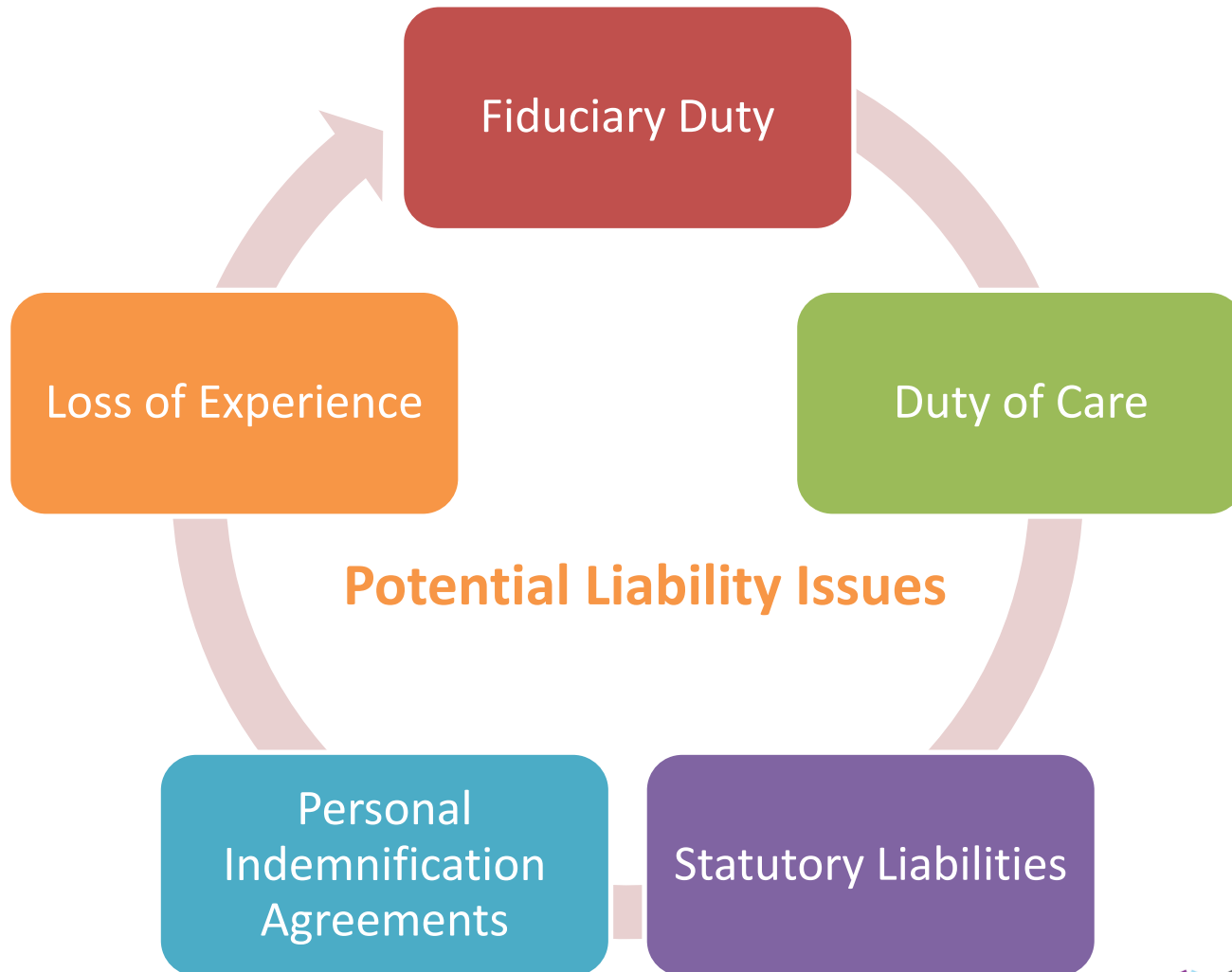
PRINCIPAL

“Risk Oversight” is a board of director’s function, primarily ensuring that the corporation has a process for identifying, prioritizing and managing risk.

OPERATIONAL

“Risk Management” is a management/staff function including oversight and monitoring to ensure policies are carried out and processes are executed in accordance with management’s selected performance goals and risk tolerances.

Role of Directors and Officers and their Obligations



Personal Liability Categories

Fiduciary Duty

- Competing with the corporation to its detriment
- Conflicts of interest
- Realizing secret profits or unfair gain through personal transactions with or on behalf of the corporation
- Realizing personal gain from the use of material, non-public corporate information (insider trading) Taking personal advantage of a corporate opportunity

Duty of Care

- Unreasonable behaviour on matters submitted for approval
- Inability to inquire about and monitor corporate affairs
- Inability to monitor outside professionals to ensure tasks / work are being completed

Statutory Liabilities

- Corporate and Securities Legislation – Bankruptcy and Insolvency Act, Competition Act, Ontario Securities Act, Investment Canada Act
- Obligations to Employees – Employment Standards Act (Ontario), Occupational Health and Safety Act (Ontario), Canada Labour Code
- Obligations to Government for Taxes and Source Deductions – Income Tax Act, Retail Sales Tax Act (Ontario)

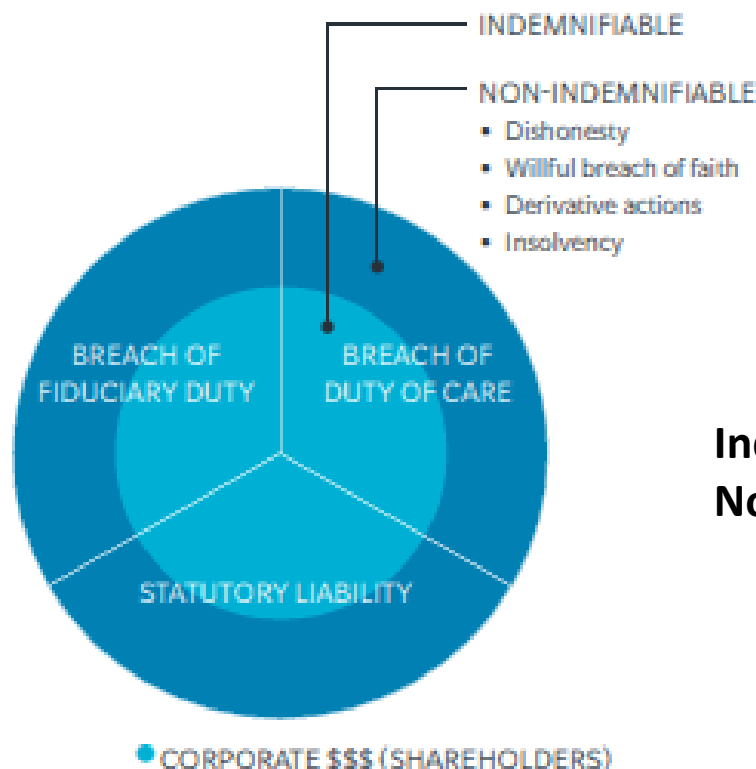
Personal Indemnification

- a) in all actions, if he / she acted honestly and in good faith with a view to the best interests of the corporation; and
- b) in the case of a criminal action or proceeding that is enforced by a monetary penalty, if he / she had reasonable grounds for believing his / her conduct was lawful.

Indemnification rights may be improved through personal indemnification agreements.

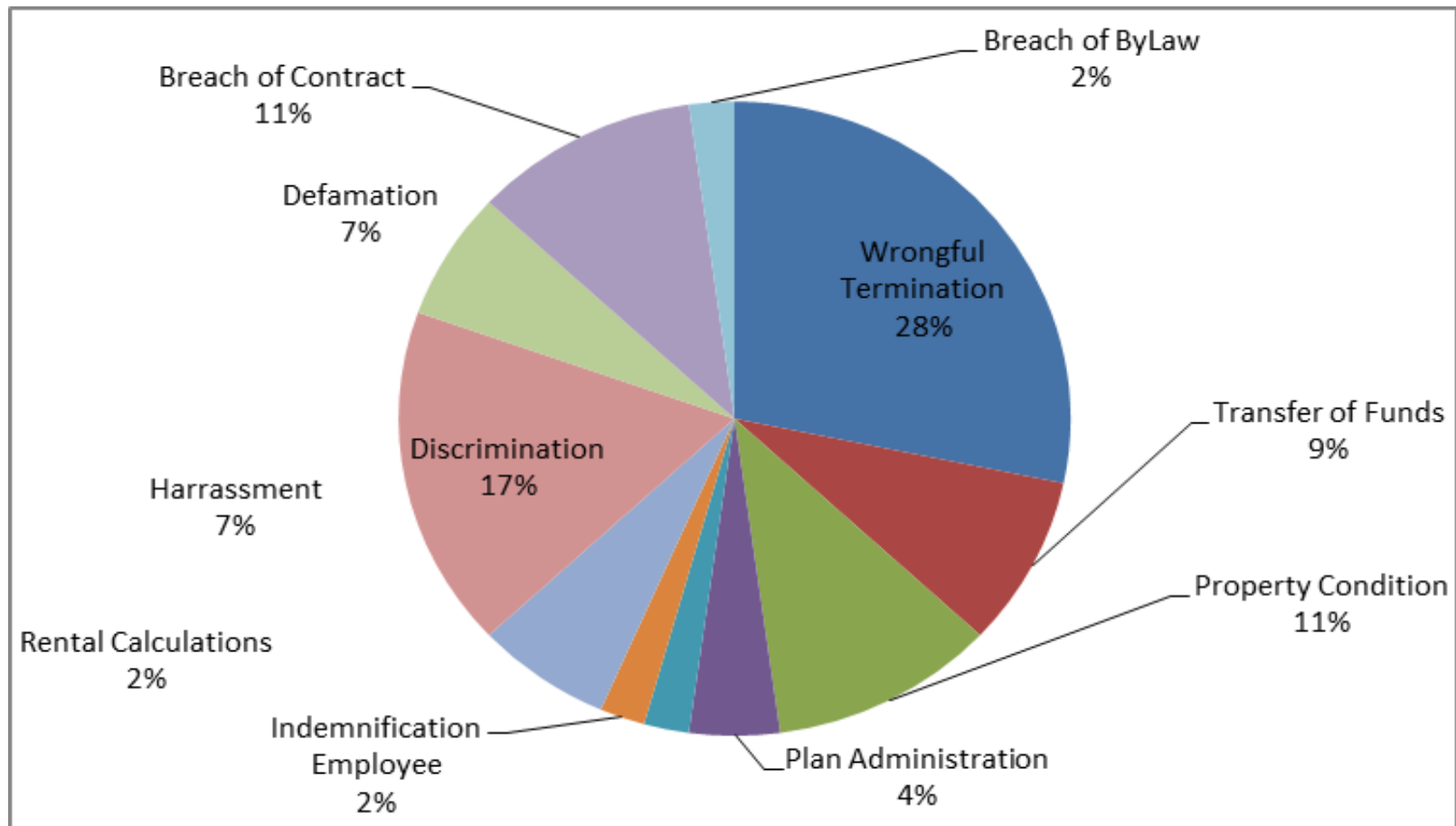
What is a Personal Indemnification Agreement?

A personal indemnity agreement is a bilateral agreement between the company and the individual director and officer that cannot be unilaterally changed by the company.



**Indemnifiable vs
Non-Indemnifiable Acts**

Loss Experience



Other examples of types of claims/allegations

Inadequate disclosure

Merger/acquisition activity

Mismanagement of donations

Financial performance or mismanagement

Executive compensation

Breach of fiduciary duty

Salary, wage or compensation dispute

Dishonesty / fraud

Loss or bankruptcy

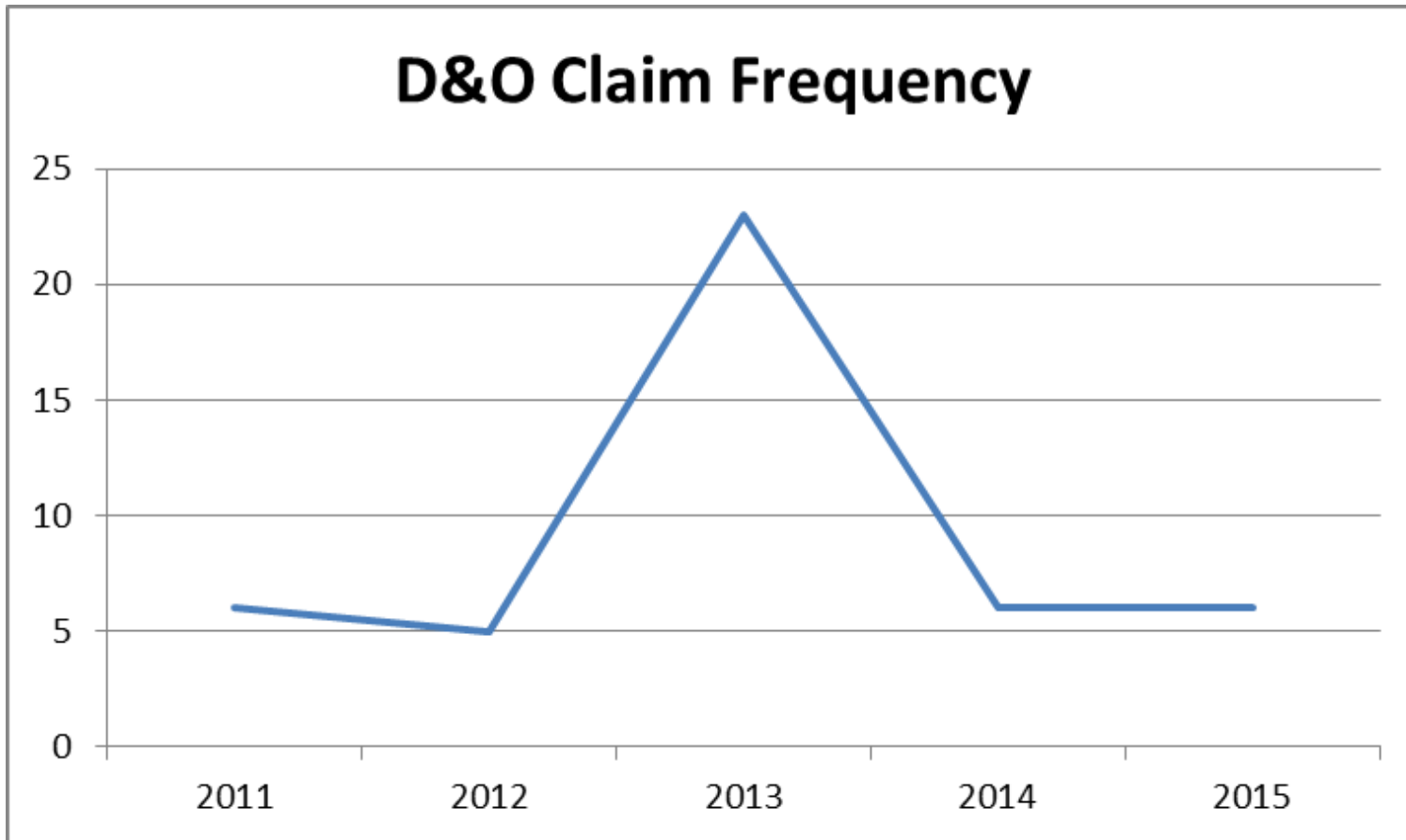
Environmental safety

Mitigate Exposure to Risk

Policies and Procedures

Type of Policy	
Policy 1:	OCCUPATIONAL HEALTH AND SAFETY
Policy 2:	REPORTING ON COMPLIANCE
Policy 3:	WHISTLEBLOWING
Policy 4:	QUALITY IMPROVEMENT AND SAFETY
Policy 5:	RISK MANAGEMENT
Policy 6:	RESPECT FOR DIVERSITY
Policy 7:	PRIVACY, SECURITY AND CONFIDENTIALITY OF INFORMATION
Policy 8:	ACCESS TO INFORMATION
Policy 9:	FINANCIAL OBJECTIVES
Policy 10:	ASSET PROTECTION
Policy 11:	PROCUREMENT AND CONTRACT MANAGEMENT PROTOCOLS

Example: (2013)



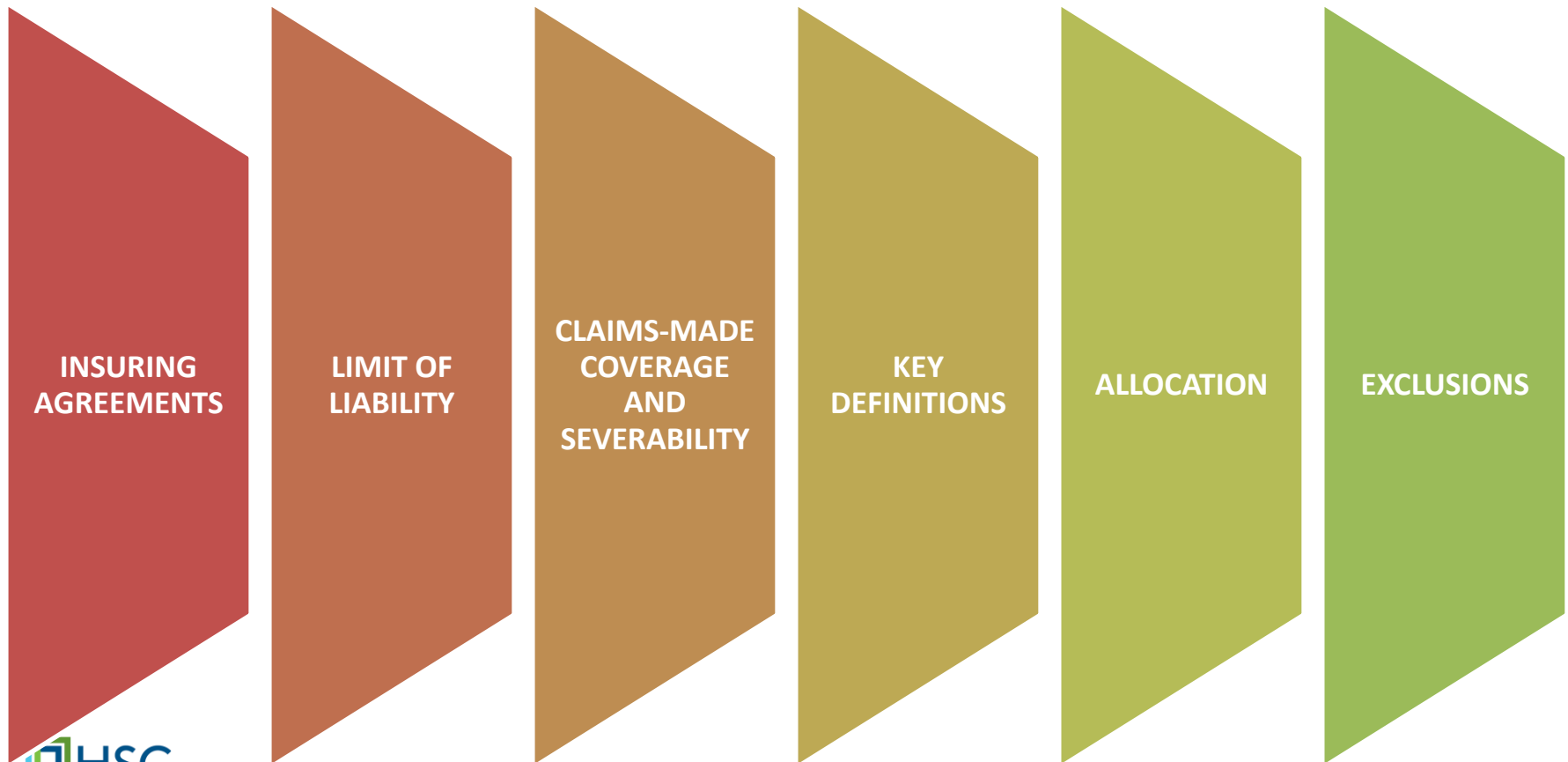
Board Indemnity

- A corporation is permitted (at its option) to indemnify directors and officers against all costs reasonably incurred in respect of any civil, criminal, administrative or investigative or other proceeding arising out of the individual's association with the company.
- The following **prerequisites must be satisfied**:
 - the director/officer must have acted honestly and in good faith with a view to the best interests of the corporation; and
 - in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the individual had reasonable for believing that the individual's conduct was lawful.
- Where the costs relate to the defence of an above action, the company is required to indemnify the director or officer (current and former).
- A corporation is not permitted to indemnify a director or officer where the pre-requisites are not made out.

Liability Insurance

Not for Profit Directors and Officers Liability Insurance Policy

Structure of Policy



Not for Profit Directors and Officers Liability Insurance Policy

INSURING AGREEMENTS

Individual

- Provides direct coverage for individual D&Os against whom a claim has been made based on a wrongful act, and where indemnification is not provided by the organization
- No deductible is applied.

Corporate Indemnity

- Reimburses or pays on behalf of the organization amounts paid to indemnify directors and officers arising from a claim alleging their liability for a wrongful act.
- Contained within the company's bylaws or articles or by contractual agreement
- Deductible is applied.

Entity

- Provides direct coverage for the organization's liability either through the policy wording or by endorsement.

Not for Profit Directors and Officers Liability Insurance Policy

LIMIT OF LIABILITY

- The policy's limit of liability typically applies to all loss, including defence costs, such that costs paid to defend a claim erode the policy limits of liability.

CLAIMS-MADE COVERAGE AND SEVERABILITY

- Coverage is triggered at the time the claim is made, regardless of when the wrongful act giving rise to the claim was committed.
- All claims or incidents which may arise and result in a claim during the policy period be reported immediately to the insurer.

ALLOCATION

- Claims will have both covered and uncovered allegations and will name both covered and uncovered individuals or entities.
- To establish how a claim will be treated, many insurers will pre-set an allocation of the amount they will pay regardless of where the actual liabilities lie.

Not for Profit Directors and Officers Liability Insurance Policy

EXCLUSIONS

1) Insured elsewhere:

- Bodily injury/property damage (commercial general liability);
- Pension liability (fiduciary liability);
- Pollution, except for non-indemnifiable carve-out (environmental impairment/commercial general liability);
- Prior claims notice reported under an expired policy; and
- Pending or prior litigation as of a certain date.

2) Uninsurable by law:

- Deliberately fraudulent acts; and
- Illegal personal profit, benefit, or advantage (e.g. illegal remuneration).

3) Outside of the intent of the D&O Policy:

- Deliberately fraudulent acts; and
- Illegal personal profit, benefit, or advantage (e.g. illegal remuneration).

How a Board can monitor risk management?

OPERATIONAL RISK CHECKLIST

COMMUNITY AND MEDIA

- Crisis Management
- Contingency Planning

TENANTS

- Evacuation Procedures
- Safety Policies and Education
- Tenant Harassment & Discrimination
- Tenant Payment (by internet/credit card)
- Condition of Properties

CORPORATION

- Review of Organization By-Laws
- Employment Practices
- Expenses
- Taxes and Financial Audits
- Procurement (Maintenance/Capital Projects)
- Insurance

Building Governance Capacity

HSC Insurance & Risk Management:

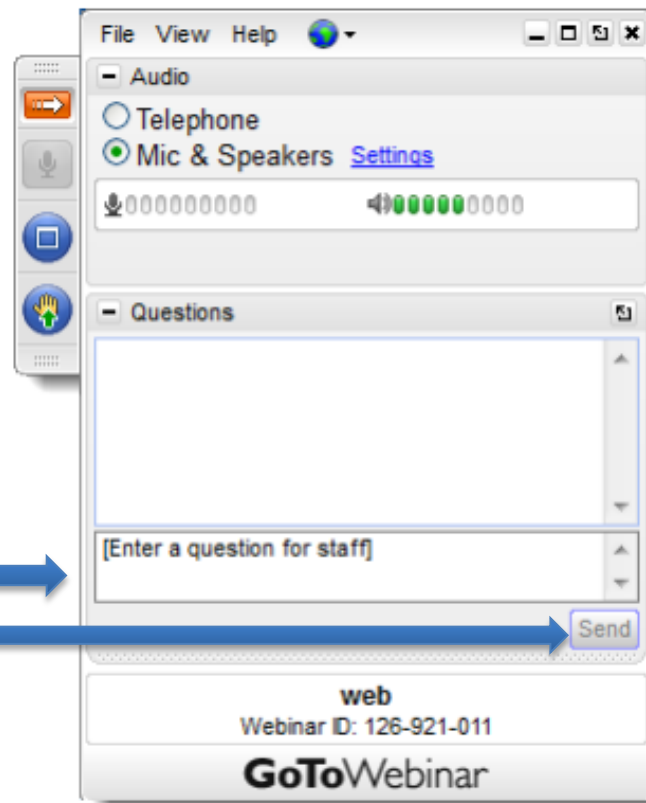
- For our property and liability programs we provide insurance, supported by a suite of risk management tools.
- For D&O we have focused on insurance and in 2017 we are building housing provider Board capacity by offering governance and risk management sessions.
- On-site practical Risk Management training courses (i.e., liability and Property Risk Mgmt)

Contact

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Questions?



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About SHARE



ONLINE RESOURCE HUB

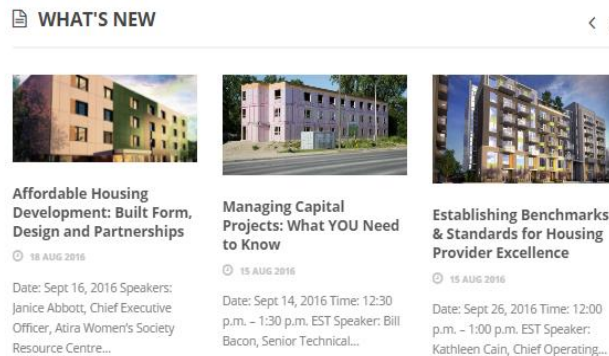
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