



# Risk Management Plan

Fiscal Year 2019-2020

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# Risk Management

## Introduction:

Risk Management is as crucial as any other task a nonprofit undertakes, because good risk management ensures that the nonprofit will have enough assets to carry out its mission. It also ensures that the nonprofit's actions will not harm the client population it is trying to serve, the general public, or the organization's employees and volunteers.

Nonprofit organizations without a risk management plan leave themselves vulnerable to events which could impose staggering costs or entirely shut down their operations. As unpleasant as it is, bad things, such as accidents, happen every day. No organization is immune from the possibility that its plan of action—even a well-thought-out one—could go seriously wrong. Risk management is the process by which an organization reviews its susceptibility to unexpected losses and develops strategies both to prevent them from happening and to reduce the financial impact when they do.

Every nonprofit organization needs to create a risk management plan and review it annually. The organization should also review the plan after it makes a significant change to the types of activities it engages in or when it acquires a piece of property, a new computer system, or other significant acquisition.

This manual will address the steps necessary to create an effective Risk Management Plan. These steps are:

1. Identify the loss exposures (risks) confronting Legacy Behavioral Services, Inc.
2. Analyze these risks in terms of frequency and severity
3. Identify and implement actions to eliminate or reduce the risks
4. Monitor the effectiveness of the risk management plan
5. Review the risk management plan at least annually to address changes in the operations of Legacy

## Assessing and Identifying Risk

The basic task of risk assessment is to imagine all the actions and relationships of Legacy that possibly could go wrong. Legacy is primarily a foster parent agency focused on placing children in foster homes. Legacy also provides services to biological parents including mental health counseling, substance abuse counseling, anger management, domestic violence prevention, good parenting techniques and child neglect prevention.

Begin by considering all of the actions that Legacy must perform in order to carry out its mission. Within all of our actions, there exists the possibility that an unplanned event or error may occur that could put our resources and assets in jeopardy.

Liability can take many forms. The most common form of potential liability is tort liability. Under the law, a nonprofit organization may be liable for a tort if it fails in its duty of care to others, and someone is injured as a result. This category generally includes preventable accidents. In addition to bodily injuries, types of injury that may trigger tort claims include property damage and personal injury such as slander, libel or discrimination.

Here is a list of possible loss exposures that confront Legacy:

- Inadequate vetting of potential foster parents;
- Inadequate or too infrequent visitations by staff to foster homes;
- Failure of social workers to adequately document case files;
- Possible sexual molestation claims involving a social worker;
- Failure of Legacy to obtain DMV pull-notices of employee motor vehicle violations;
- Failure to control media relations including employee usage of outlets such as Facebook;
- Failure to obtain evidence of liability insurance from outside service providers;
- Assumption of excessive tort liability through lease agreements;
- Assumption of tort liability through fund-raising activities;
- Inadequate limits on property/casualty insurance policies;
- Mifeasance, malfeasance or nonfeasance of Board members;
- Unsafe working conditions caused by physical hazards.

While such a list may seem daunting, it is important to remember that there are many things Legacy already does as part of its normal operation to decrease the risk of loss. The risk management plan is designed to strengthen those steps and to spot any areas where additional steps can be taken.

It is also important to remember that the risk of physical injury is not the only risk Legacy faces. A nonprofit organization frequently enters into agreements with other parties for goods or services; it receives grants, it employs workers, and it has tax-exempt status. A nonprofit must comply with the terms of the grant agreements, contracts, and government regulations. In addition, an organization must ensure that it has appropriate financial controls in place. This will help make sure that funds are handled properly and all required filings are made in a timely fashion.

## **Mitigating Risk**

Risk mitigation is a strategy that allows an organization to focus on the actions it can take to prevent accidents from happening and to diminish the potential impact of

possible losses. A risk mitigation strategy should include both physical precautions and administrative procedures that Legacy can take to reduce its exposure to risk.

Once Legacy's risks have been identified, the next step is to develop a plan for addressing them individually. Legacy must be aware of the rules that regulate activities. This will help identify areas of risk that Legacy may not have known exist, as well as improve its compliance with the law.

### Categories of Risk:

As a first step, you need to decide into what category the risk falls. There are four risk categories:

<b>Low frequency/low cost</b>	<b>High frequency/low cost</b>
<b>Low frequency/high cost</b>	<b>High frequency/high cost</b>

How you rate the risk of loss to the organization will determine how many resources should be expended trying to lessen the risk.

### Safety First:

As the first step in mitigating its risks, Legacy should take the actions necessary to ensure that its facilities are safe. A thorough risk assessment will include an inspection of Legacy's premises. If there are potential hazards, such as faulty fixtures, loose railings, or poor lighting, then arrange for the appropriate maintenance work and make certain to perform it. This also applies to foster home inspections. When a social worker visits a foster home he/she should be aware of potentially unsafe conditions. Social workers should include comments about foster home conditions in the case file notes and the social worker should follow up to ensure that unsafe conditions have been corrected.

### Train Workers:

Legacy's employees are the first line of defense when developing a risk management plan. It is essential to stress to them the importance of looking out for the safety and security of the organization's clients, customers, and workers, as well as the security of its assets.

A worker can only follow a rule or procedure that the organization has explained to them. If Legacy requires workers to conduct activities that could affect someone's well-being, then Legacy has to be certain that workers have received proper training. Legacy should arrange for workers to attend training courses. An employee handbook is a good way to collect important information and to ensure that workers have ready access to it. Legacy can use these techniques to design a strategy for teaching workers to identify and prevent risks as they become aware of them.

For the FY 2019-2020, Legacy had identified the following trainings for staff to attend:

- Cultural Competency Training
- Sexual Harrassment and Molestation prevention training
- Behavioral Intervention Training
- Title 22 Training
- Customer Service Training
- Working with Sexually Abused Children Training

#### **Follow Best Practices:**

Nonprofits that try to learn from the experience of others do a better job of avoiding situations that create potential liabilities. A nonprofit should investigate the best practices of its industry and the relevant legal requirements to set standards of behavior.

For the FY 2019-2020, Legacy will join the Alliance of Foster Family Agencies giving it access to regulatory consultation, legal interpretation, and experience from over 300 agencies in California.

#### **Set the Right Tone:**

A good risk management plan requires open and honest communication among the board, staff, and volunteers about the risks the organization faces. One way to encourage openness within Legacy is for the officers and the board of directors to establish the right "tone at the top." The "tone at the top" refers to the ethical climate created in an organization by its leadership. A key element of any risk management plan is for the directors and officers to foster a climate whereby employees act in a manner that upholds the highest ethical standards while carrying out their duties.

The board should make clear that, in making decisions, it is doing what it believes is in the best interests of Legacy to help carry out its mission. It is also the board's responsibility to ensure that Legacy fully complies with all applicable federal, state, and local laws and regulations.

### **Put It in Writing:**

Ultimately, management and oversight by a nonprofit's officers and directors determine how closely risk mitigation strategies are followed. To assist leadership in monitoring Legacy's risk mitigation strategies, Legacy should document the actions taken to mitigate risks. Having a written record will inform managers on what actions the organization has and has not performed. Documentation will also help Legacy prove that it undertook precautionary and corrective measures when and where necessary.

### **Risk Management and Insurance:**

Many people think that risk mitigation just means buying insurance. However, risk mitigation strategies are more than that. The goal of risk mitigation is to prevent accidents and other losses from happening. While insurance may pay for the out-of-pocket costs if Legacy is sued or otherwise incurs a loss, it does not pay for the staff time and program momentum that will be lost if there is an accident. It cannot compensate for the loss to the organization's reputation. Insurance also does not heal the pain that everyone feels when someone is seriously injured. It is also important to remember that not all risks are insurable or are insurable at an affordable cost.

For the FY 2019-2020, Legacy will develop and implement a Risk Assessment tool for evaluating RFA homes. Additionally, Legacy will develop and implement a procedure for developing RFA homes and decreasing their overall risk.

### **Dealing with Identified Loss Exposures:**

#### ***Inadequate Vetting of Potential Foster Parents:***

Potential foster parents undergo an approximate one-hour orientation session which presents the stark realities of foster parenting, including good aspects and outcomes. This orientation is intended to screen potential foster parents prior to the actual vetting process. The orientation is designed to help the potential foster parents realize if foster parenting is what they really want to undertake.

The actual vetting process takes up to six (6) months to complete and consists of the following:

- A "Live Scan" is required by the State of California which includes complete fingerprinting of both potential foster parents and any person over the age of 18 residing in the home. The fingerprints are submitted to all law enforcement data bases to determine if either person has any felony convictions, DUI's, etc.
- References are reviewed.
- A budget review of the potential foster parents is completed to ascertain if they have adequate funds and income source (s) to support a foster child without reimbursement.

- Employment verification shall be conducted for all foster parents.
- The potential parents undergo approximately 18 hours of training using company approved training materials.
- The potential parents must be familiar with Legacy's Foster Parent Training Manual.
- A Health screening tool is used for every family. When concerning medical conditions are identified, a licensed Medical Professional must certify each person as being physically and mentally fit to perform the functions of a foster parent.
- A Family Evaluation (previously called a Psych-Social Assessment) shall be performed for potential parents. This study delves deeply into the background of each person.
- A "SAFE" home inspection is performed to be certain that the home complies with Title 22. No trampolines are permitted.
- Kelly Kleinhammer, Legacy Administrator, is the only person who can certify that all aspects of the vetting process have been satisfied.

The vetting process is extremely thorough. Legacy is insured for Professional Malpractice in the unlikely event that future allegations are made that Legacy did not adequately investigate potential foster parents prior to child placement.

#### *Inadequate or too Infrequent Visits by Staff to Foster Homes:*

Legacy Staff Social Workers have a limited number of cases that they manage. Management of cases includes frequent visits to the foster home including one-on-one meetings with the foster child, age permitting. All visits are documented in case file notes, including any concerns of the social worker regarding conditions of the home and well-being of the child.

Legacy is insured for Professional Liability. Follow-up visits are made to ensure compliance by the foster parent concerning social worker recommendations.

#### *Failure of Social Workers to Adequately Document Case Files:*

The following quality control process is in place at Legacy:

- All case files are subject to peer review quarterly;
- 10% of open cases are reviewed quarterly;
- All case files are audited within 3 business days of the case being closed;
- Social Work Supervisors meet weekly with their assigned social worker to discuss progress on case files.

#### *Possible Sexual Molestation Claims Involving a Social Worker:*



While there have been no instances or allegations of sexual molestation or improper sexual conduct by Legacy employees, the potential is always present.

Visitations with children of the opposite sex are limited to public locations. Children who are sexually aggressive or who have a history of sexual allegations will be subject to an approved safety plan.

For the FY2019-2020, Legacy will develop a procedure for safety plans regarding children sexualized behaviors or a history of sexual abuse.

Presently, Legacy's Commercial Liability Policy (CGL) includes coverage for claims alleging sexual misconduct or molestation.

### **Negligent Entrustment:**

Legacy employees operate their personal automobiles on Legacy business. This often involves transporting a foster child in the employee's car. Legacy has a policy whereby employees are required to present evidence of automobile liability insurance as their policies renew. In the event an employee is cited for a DUI or other serious violation, Legacy should not permit the employee to use their personal auto on Legacy business. If an employee who has had moving violations is involved in a serious accident, Legacy can be sued for negligent entrustment of a motor vehicle if it is proven that Legacy was aware of the driving violations of the employee and continued to permit that employee to drive on Legacy business.

The insurance carrier that provides Legacy's non-owned automobile liability insurance runs an annual DMV check on all Legacy employees that drive their personal cars on Legacy business. Legacy will continue to require those employees to provide evidence of auto liability insurance. An employee is legally permitted to operate a vehicle if they carry minimum limits of insurance. These limits are \$15,000/person, bodily injury; \$30,000 / occurrence, bodily injury and \$5,000 per occurrence property damage. Legacy may wish to consider requiring that higher limits be carried, but may encounter resistance from some employees unless Legacy is willing to reimburse the employee for the additional cost.

It should be noted that Legacy does carry non-owned automobile liability insurance with a limit of \$1,000,000 Combined Single Limit (CSL).

### **Media Relations:**

This exposure comes from two types of activity. The first is presented by unauthorized persons discussing Legacy issues with the printed or television/radio media. The second exposure comes from Legacy employees discussing Legacy matters on personal media such as Facebook or Twitter.

Only one person should be authorized to give a statement to any public media representatives such as reporters or interviewers. This ensures that all disseminated information is accurate and consistent.

Employees are strictly forbidden to discuss any aspect of Legacy business on their personal media accounts without expressed written consent from the CEO.

#### **Failure to Obtain Evidence of Insurance from Service Providers:**

Legacy contracts with several service providers including copier maintenance, psychiatric services and insurance brokerage. In some instances, the service providers visit Legacy's offices.

In those instances where the service is performed at Legacy offices, there is a risk of damage to Legacy property caused by the provider. In either event, the providers should produce evidence of liability insurance. Professionals, such as the psychiatrist, should have Professional Errors and Omissions Liability insurance.

All contracts, regardless of the type of service, should contain at least mutual Indemnification and Hold Harmless provisions.

Indemnification and Hold Harmless clauses must be supported by evidence of insurance in the form of a certificate of insurance. Without some evidence of financial responsibility, Legacy is relying upon the service providers' ability to fulfill their obligation to Legacy using the providers' assets alone.

For the FY 2019-2020, Legacy will review all third party contracts for evidence of insurance and set in place a plan for compliance.

#### **Assumption of Excessive Tort Liability in Lease Agreements:**

All space leases should contain language wherein both parties agree to mutually indemnify and hold harmless each other for losses caused by the gross negligence or willful misconduct of the indemnifying party.

#### **Assumption of Tort Liability through Fund Raising Activities:**

Fund raising is a critical source of income for all non-Profits. Legacy has engaged in some fund-raising activities in the past and will continue to do so. The CGL policy is endorsed to provide coverage to Legacy for liability arising out of these activities, however there are exclusions on the policy regarding certain types of events, most particularly athletic events. Legacy has sponsored bike races and 5K/10K runs which had to be added to the policy at an additional premium.

Prior to sponsoring a fund-raising event, Legacy's risk manager should be consulted to ensure that the event is not excluded from the CGL policy. KIA Insurance Associates, Legacy's broker, should be involved in this review.

### **Inadequate Limits on Property/Casualty Insurance Policies:**

Legacy's CGL policy has a \$1,000,000 /occurrence limit with a policy aggregate limit of \$3,000,000. To date there has been one significant claim paid by the insurance carrier, NonProfits Insurance Alliance of California. The Property policy covers personal property at each office location occupied by Legacy. These limits are not blanketed over all locations, but any loss at one location would be subject to the stated limit for that location. The Property policy also contains a co-insurance clause of 80%. Because each location has a stated limit of coverage, if a loss occurs and the limit of coverage is not adequate, the co-insurance clause will reduce the amount of recovery.

An umbrella liability policy for the type of business Legacy provides is not available at this time.

### **Misfeasance, Malfeasance or Nonfeasance of Board Members:**

Legacy has Director's and Officers Errors & Omissions insurance. While the likelihood of a claim against the Board of Directors is remote, the creative atmosphere of our litigious society does not rule out that possibility. D&O coverage is usually written in two parts, Coverage A and Coverage B. One part reimburses the company for payments made on behalf of the Directors and Officers, and the other part directly reimburses the Directors and Officers if the Company does not reimburse them. If a claim is sustained against a Director or Officer without D&O coverage, the responsibility of payment would fall upon the individuals personally.

### **Unsafe Working Conditions Caused by Physical Hazards:**

Periodic walk-through inspections are to be made of all Legacy locations to identify hazards such as ungrounded electrical plugs, tripping hazards, fire extinguisher conditions, etc. Employees should be instructed on safe work habits and conditions.

### **Serious Losses and Filing a Claim:**

If Legacy experiences a serious loss, there are some important steps that should be taken in the immediate aftermath of the loss. **Legacy should never admit liability or commit to make any payments.** Offer medical attention as warranted, and if appropriate under the circumstances, have the injured party complete an "incident report." Inspect the area or condition where the loss occurred and note any defects or contributing factors. Take photos or videos of the area or condition as soon as possible; document the date, time, and name of the person taking photos or videos; and retain documentation for your records. Retain any evidence relevant to the incident by immediately tagging and storing them in a protected place until you speak to your

insurance adjuster. Identify witnesses and, if possible, have them give a statement of the facts as they know them, even if they did not see the incident occur. The exception to these procedures applies in instances or cases where Legacy must comply with requirements of a State of California investigation.

In the event of a loss to Legacy property, take immediate steps to mitigate the loss by segregating undamaged property from that which is damaged, if possible.

Keep in mind that if Legacy is sued following an incident, you may have to turn over to the other side any e-mails or other written communications about the incident. You should not offer opinions about what occurred, but limit your communications to factual statements.

Every insurance policy requires that the insured file a claim promptly; some will even specify an exact time deadline by which the claim must be filed. There are several reasons for this. First, and most important, the longer you wait to file the claim, the harder it will be for the insurance company to investigate the facts. Memories fade, we lose track of witnesses, and evidence gets lost. Therefore, Legacy should contact its broker every time there is a serious incident involving the organization. It may not always be necessary to alert the carrier, but you should discuss the incident with your broker.

**You should always alert your insurance carrier as soon as possible if employees' vehicles are involved in an auto accident while conducting Legacy business; if there is a loss of property due to a fire, theft, natural disaster, or accident; or if your organization is sued.**

If you fail to give timely notice, it may jeopardize your coverage under the policy. You should pay special attention to these deadlines in the case of a claims-made policy, since claims made after the deadline are not covered by the policy. An example of a claims-made policy is a Director's & Officer's Liability policy.

A claims-made policy covers losses that were incurred **and** reported during the policy period. The policy period may be extended by attaching a "retroactive date" of coverage and by purchasing "tail coverage" to extend the coverage beyond the normal expiration date of the policy. The retroactive date is the first date that claims made coverage was purchased and the coverage was renewed going forward. The "tail coverage" extends the period of time for reporting a claim arising out of a loss that occurred during the policy term but which was not reported by the insured during the coverage period. These are particularly important if the insured switches from a claims-made policy form to an "occurrence" policy form.

Legacy's insurance broker should be in communication with your insurance carrier to determine the status of any claim so that you are aware of how the claim is being handled on your behalf. If there is litigation, Legacy will be expected to assist in the

litigation, and if you fail to do so, Legacy may forfeit coverage under the insurance policy.

### **Obtaining and Retaining Copies of Insurance Policies:**

It is important that Legacy obtain from its broker copies of insurance policies and keep them in a secure place. Liability policies should be kept permanently. This is because you may find out years later that something happened during that policy period giving rise to the claim, and the insurance company will have to provide you with a legal defense and pay any claims even if many years have passed.

### **Finally:**

Legacy should have a designated person on staff that will assume the responsibilities of risk management. The CEO, Martin Hansen, is the designated staff responsible for risk management.

## Fiscal Year 2019-2020 Risk Management Plan

Object Dominion	Objective	Performance Indicator (measure)	Who Applied To	Time of Measure	Data Source	Obtained by	Performance Target	Results	Extenuating factors	Results Last Period
Training	Have all staff and Resource Parents trained on cultural competency. Assure that the staff understands the risk associated with services that are not culturally sensitive	All training of key components shall have a test administered to demonstrate understanding.	All Legacy Foster Parents, and Legacy Staff.	Training completed by August 31, 2019	Training attendance time in sheet and training test results	Assigned Trainer – Martin Hansen	100% Attendance, 80% correct answers of test			
Training	Have all staff trained on the prevention and safeguards to protect against sexual molestation allegations	All training of key components shall have a test administered to demonstrate understanding.	All Legacy Staff, Robin Paggi (Work Logic)	Training completed by March 31, 2020	Training attendance time in sheet and training test results	Martin Hansen & Robin Paggi	100% Attendance, 80% correct answers of test			
Training	Have all staff trained on the proper skills for behavioral intervention	All training of key components shall have a test administered to demonstrate understanding.	All Legacy Staff	Training completed by September 31, 2019	Training attendance time in sheet and training test results	Martin Hansen & a qualified behavioral intervention alist	100% Attendance, 80% correct answers of test			
Training	Have all staff trained on Title 22 and the new interim licensing regulations	All training of key components shall have a test administered to demonstrate understanding.	All Legacy Staff	Training completed by December 31, 2019	Training attendance time in sheet and training test results	Kelly Kleinhammer	100% Attendance, 80% correct answers of test			
Training	Have all staff trained on customer service	All training of key components shall have a test administered to demonstrate understanding.	All Legacy Staff	Training completed by May 30, 2020	Training attendance time in sheet and training test results	Kelly Kleinhammer	100% Attendance, 80% correct answers of test			
Training	Have all staff trained on working with sexually abused children	All training of key components shall have a test administered to demonstrate understanding.	All Legacy Staff	Training completed by June 30, 2020	Training attendance time in sheet and training test results	Outside trainer (obtained by Kelly Kleinhammer)	100% Attendance, 80% correct answers of test			

Object Dominion	Objective	Performance Indicator (measure)	Who Applied To	Time of Measure	Data Source	Obtained by	Performance Target	Results	Extenuating factors	Results Last Period
Liability	Legacy become a member of the Alliance of Foster Family Agencies	Membership confirmation	The Corporation and the Foster Family Agency	Completed by July 31, 2019	Confirmation from the Alliance	Kelly Kleinhammer	Full Membership			
SOP	Develop a Risk Assessment tool and procedure for all RFA homes Identify risks to the corporation	Implementation of procedure and evaluation of all families	The Corporation and the Foster Family Agency	Completed by August 31, 2019	SOP of the Corporation	Martin Hansen	100% of families evaluated			
Safety Equipment	Assess necessary safety equipment for vehicles used for company business. Secure equipment and a procedure for its use.	All vehicles used for company business are equipped with required safety equipment	Legacy Administrative Staff, Legacy Social Workers who use vehicles for company use.	6 month inspection of vehicles shows the presence of safety equipment	Vehicle inspection log	Kelly Kleinhammer (Inspector) & Martin Hansen (Procure equipment and write policy)	100% of company used vehicle have safety equipment by November 30, 2019			
Safety Plan	A vehicle Safety plan shall be developed for all vehicles used for company business	All vehicles used for company business are equipped with a safety plan.	Legacy Administrative Staff, Legacy Social Workers who use vehicles for company use.	6 month inspection of vehicles shows the presence of safety plan	Vehicle inspection log	Kelly Kleinhammer (Inspector) & Martin Hansen (write policy)	100% of company used vehicle have safety plan by November 30, 2019			
Safety Plan	Develop and implement a procedure for establishing safety plans, especially those involving children with sexualized behaviors or a history of sexual abuse	Approved written SOP	All FFA Staff and FFA operations	Completed by January 31, 2020	State regulations, SOP's	Kelly Kleinhammer and Martin Hansen	SOP written and approved by CEO			

Object Dominion	Objective	Performance Indicator (measure)	Who Applied To	Time of Measure	Data Source	Obtained by	Performance Target	Results	Extenuating factors	Results Last Period
SOP	Review all Contracts for evidence of liability insurance	Action steps by contract	Martin Hansen	Completed by April 30, 2020	Leases and contracts	Martin Hansen	List of all contracts with actions steps.			