



**VOLUNTEER
MANAGEMENT
IN MARYLAND:**

**Legal Liability &
Insurance Issues**

William Donald Schaefer, Governor

Volunteer Management in Maryland: Legal Liability & Insurance Issues

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TABLE OF CONTENTS

Acknowledgements	iii
Table of Contents	v
Glossary of Terms	viii
Introduction	1
Chapter One Volunteers and the Law in Maryland: General Liability and Immunity	
Introduction	3
Legal Responsibilities of Volunteers and Agencies to Injured Parties	3
Potential Liability in General	3
Responsibilities of Volunteers and Organizations	4
Negligence	4
Intentional Misconduct	5
Invasion of Privacy	5
Standard of Care and Negligence	5
Children	5
Professionals	6
Statutory Protection from Negligence Suits for Volunteers	6
Protection for Individual Volunteers	6
Community or Charitable Organization Volunteers	6
Emergency, Medical Care and Fire Company Volunteers	7
School Athletic Team Physicians	8
Non-Statutory Legal Defenses Available to Volunteers	8
Waiver	8
Assumption of Risk	8
Contributory Negligence	9
Liability of Governmental Volunteers	9
State of Maryland as Defendant	9
The Defense of Sovereign Immunity	9
The Maryland Tort Claims Act	9
Local Government as Defendant	11
The Local Government Tort Claims Act	11
Charitable Organizations as Defendants	12
The Defense of Charitable Immunity	12
The Volunteer as Plaintiff	13
Volunteers in State Government	13
Volunteers in Fire or Rescue Companies	13

Volunteers in Public Schools	13
Volunteers in Non-Governmental Agencies	14
Chapter Two Board Member Liability and Responsibility	
Introduction	15
Guidelines	15
Participation	15
Conflicts of Interest	15
Good Judgement	16
Statutory Limitations of Liability	16
Charitable Organizations Solicitations	17
Conclusion	18
Chapter Three Risk Management Strategies	
Introduction	19
Risk Management Process	19
Risk Management Alternatives	20
Risk Avoidance	20
Risk Acceptance	20
Risk Transfer	20
Risk Reduction	20
Risk Prevention	21
Volunteers and Risk Management	21
The Organization	21
The Individual	22
Insurance as a Risk Management Alternative	23
Commercial General Liability Insurance	23
Worker's Compensation and Employer's Liability	24
Commercial Automobile Insurance	25
Umbrella Liability Insurance	26
Fiduciary Liability Insurance	26
Professional Liability Insurance	26
Association Professional Liability	26
Directors' and Officers' Liability	26
Chapter Four Personnel Issues	
Introduction	28
Interviewing and Screening Volunteers	28
Application Form	28
The Interview	28
Discriminatory Questions	29
Reference Checks	29
Rejecting Applicants	29
References	30

Training and Supervision	30
Discrimination and Sexual Harassment	30
Confidentiality and Record Keeping	31
Access to Files	31
Paid Staff Members as Volunteers	31
Dismissing Volunteers	31
Chapter Five Special Populations, Special Needs, Special Risks	
Volunteers Working With Children	33
Volunteers Working With Disabled or Aged People	34
Volunteers Who Are Minors	34
Minimum Age Issues	34
Insurance	35
Placement	35
Supervision	35
Court-Ordered Community Service	35
Introduction	35
Administration	36
Guidelines	36
Placement	36
Supervision	37
Liability	37
Stipended Volunteers	37
Resources	39
Appendix A	42
Appendix B	43
Notes	44

GLOSSARY OF TERMS

While an attempt has been made to use non-legal, standard English throughout this publication, some technical terms had to be used. When used in this publication, these terms have the following meaning.

Charitable Organization

An organization organized and operated exclusively for benevolent, educational, philanthropic, humane, patriotic, or religious purposes; an organization exempt from taxation under the Internal Revenue Code.

De Facto

In fact; actual; in reality.

Defendant

The one who the plaintiff claims should pay the expenses caused by the injury.

Exclusion

In an insurance policy, that section which deletes or defines what is not covered.

Exempt

Freedom from or released from an obligation.

Fair Labor Standards Act

Federal statute regulating employees' wages and hours. In general, FLSA applies to non-supervisory employees in public or private settings. All employees covered by the FLSA must be paid a fair wage for all hours worked in accordance with applicable Federal labor law.

Fiduciary

A person obligated to act in the best interest of another; a person or entity designated to hold something, usually money, in trust for another, including acting for another's benefit in such matters.

Gross Negligence

A higher degree of negligence; for example when one acts in a reckless, wanton or malicious manner, unconcerned about the consequences. A

degree of carelessness greater than negligence but not rising to deliberate wrongdoing.

Hold Harmless (Indemnify Clause)

A contractual agreement whereby one party agrees to pay the costs of claims against another (assumes the liability of another, thus releasing the other party from responsibility.)

Immunity

Freedom from legal liability or responsibility for wrongs committed.

Intentional Torts

A category of deliberate wrongdoing that includes actions such as assault, battery, false arrest, slander and defamation of character.

Liability

Responsibility for wrongs committed.

Malice

An improper motivation that implies evil intent, which may be inferred from the intentional commission of a wrongful act.

Negligence

Unintentional failure to exercise the care that a prudent or reasonable person usually exercises.

Non-Exempt

Not excluded from or released from a rule or obligation.

Plaintiff

The alleged injured party who complains or sues.

Primary Insurance The insurance policy or coverage that applies first in a loss situation.

Tort

A legal wrong, other than breach of contract, which is civil, rather than criminal in nature. Two major categories of torts are negligence and intentional torts.

Volunteer

A person who performs a service of his or her own free will without compensation.

Wanton

Heedless, malicious; extreme recklessness in regard to the rights of others.

INTRODUCTION

In 1989, Governor William Donald Schaefer and the Young Lawyers' Section of the Baltimore City Bar Association published "Volunteers and the Law in Maryland," a resource guide that addressed some of the many legal questions pertaining to the liability of volunteers in organizations. After three printings and 10,000 copies, the Young Lawyers' Section and the Governor's Office on Volunteerism joined together with the Maryland Council of Directors of Volunteer Services to present this sequel.

Volunteer Management in Maryland: Legal, Liability & Insurance Issues is designed to offer specific guidelines and procedures to limit legal liability and to provide solid risk management strategies for volunteer programs in organizations. This book provides practical guidelines to help you understand the major law-related topics that affect volunteer program management. A *Glossary of Terms* is provided to help define some of the frequently used legal terms.

Chapter One, *Volunteers and the Law in Maryland*, is an overview of the general liabilities and immunities of volunteers under Maryland law. It describes the legal liabilities of both volunteers and the agencies they serve. In addition, it outlines the scope of Maryland laws that protect volunteers from civil suits that may arise from acts of ordinary negligence.

Board Member Liability and Responsibility, Chapter Two, provides a comprehensive set of guidelines that board members and officers of Maryland charitable organizations should follow to avoid errors and omissions that may lead to legal liability. Specific examples of legal responsibilities are included to help members and officers develop policies and procedures for their organizations.

Chapter Three, *Risk Management Strategies*, details the fundamental elements of a risk management program. Included in this section are a discussion of insurance as a risk management strategy and an overview of the different types of insurance policies available to volunteer groups.

The Fourth Chapter, *Personnel Issues in Volunteer Management*, discusses policies and personnel procedures that are advisable under the analogous field of employment or labor law. Topics in this chapter include guidelines for hiring and firing volunteers, confidentiality procedures and equal opportunity employment laws.

Finally, Chapter Five, *Special Populations, Special Needs, Special Risks*, presents some of the unique needs or risks commonly associated with different categories of volunteers, including new rules for disabled volunteers, the concerns of working with minors, and the needs of court appointed community service workers.

Resources highlights a few organizations and publications that provide additional information. Over the past few years, many excellent books have been published specifically for administrators working with volunteer programs.

The intent of this book is to provide practical ideas, applicable to volunteer organizations. Because the law is fluid and ever changing, it is recommended that managers perform their own research and check with a lawyer and other professionals before making any decision with respect to the current state of the law.

chapter one

VOLUNTEERS AND THE LAW IN MARYLAND: GENERAL LIABILITY AND IMMUNITY

Introduction

This chapter provides a brief description and overview of the potential liabilities of both volunteers and the organizations using the services of volunteers. This section also will attempt to identify the potential plaintiffs (those who might file suit) or defendants (those who are sued) in those situations where there is potential liability.

Finally, this chapter will identify some of the legal defenses that volunteers and organizations may assert if they are sued.

It is a volunteer's responsibility to obey all laws whether or not he or she is engaged in volunteer work. If a volunteer violates a law during the course of performing volunteer duties, a volunteer will be individually liable for any subsequent penalties. For example, violation of a traffic ordinance or speed limit while driving a vehicle may render a volunteer personally liable for any fine imposed, even though driving the vehicle was a part of his or her volunteer work.¹

Legal Responsibilities of Volunteers and Agencies to Injured Parties

Potential Liability in General

Volunteers, acting on behalf of an organization, may find that they made an error, committed some act, or failed to act when they had a duty to do so, and thereby caused harm to another person, or to the organization. Most often, these situ-

ations will fall into a broad category generally known as "torts." A tort is a civil wrong other than a breach of contract, generally involving conduct that is unintentional but which causes harm.² Where the conduct is reckless or intentional (with "malice") and/or criminal, the liability and potential plaintiffs or defendants may differ significantly from those arising from an unintentional tort.³

If a person is injured by a volunteer's action or inaction, he or she may attempt to sue for compensation. The success of a legal action will depend upon whether the volunteer owed a duty to act in a certain manner and breached that duty, and whether the injury was foreseeable.

In most instances, the plaintiff will be the person injured directly by the volunteer. There are situations in which someone else may be the plaintiff. Children under a certain age may not be able to sue; parents may sue on their children's behalf. The spouse of an injured person may claim damages for the loss of the spouses services.

If a person is injured by a volunteer, in all likelihood he or she will seek to sue both the volunteer and the organization for which the volunteer was working at the time of the injury, to assure recovery from someone. In many cases, the organization may have insurance or income and by suing both, the injured party may be more assured of at least one defendant's ability to pay for a judgment.

In some situations, however, the organization may not have insurance and, if the organization is

a charity or governmental body, the injured party may not be allowed to sue the organization. If suit is allowed against the organization, the volunteer and the organization may be jointly and severally liable.⁴ In other words, the injured party may be able to recover a judgment from either one or both.

Responsibilities of Volunteers and Organizations

In the absence of a statute or other special principle of law, a volunteer is in the same legal position as any other person, and is responsible for the his or her own torts. Moreover, under the doctrine of "respondeat superior," a form of vicarious liability, a sponsoring organization will be responsible for the torts of its volunteers if the volunteers committed the torts while acting within the scope of their volunteer work just as an employer is liable for the torts of its employees. This principle is applicable even though the organization may have used due care in the selection, instruction and supervision of its volunteers.⁵

Whether the organization and the volunteer share responsibility for any wrongdoing may depend upon the type of conduct, as well as the standard of care imposed upon them. The following is an overview of three of the bases on which volunteers and organizations may be liable: negligence, intentional misconduct and invasion of privacy rights.⁶ Following this overview, standard of care and negligence is explored in more detail, along with the defenses that may be raised to a negligence action.

Negligence

Negligence, simply put, is doing something that a person using ordinary care would not do, or not doing something that a person using ordinary care would do. "Ordinary care" is that caution, attention or skill that a reasonable person would use under similar circumstances.⁷ This is called the reasonable person standard.⁸ A hospital volunteer, for example, may be acting unreasonably

if he or she fails to notify the doctor or nurse of a patient's emergency. A volunteer may also be acting unreasonably if he or she provides medical treatment without a doctor's supervision or approval. An organization may be negligent for failing to provide volunteers working in medical settings with the training that a reasonable organization would provide. As noted below, Maryland statutes now limit the extent to which volunteers can be liable for negligence.

A person is not legally "negligent" unless that person is deemed to have owed a duty to the injured person. Thus to be considered negligent, a volunteer or the sponsoring organization must have owed a duty to the injured party, which the volunteer or the sponsoring organization did not perform or fulfill.⁹ Absent such a duty, the volunteer and the sponsoring organization are not legally responsible to the injured party. For example, a hospital volunteer may owe a duty to a patient to call the doctor or nurse for a patient's emergency, but does not have a duty to provide medical treatment. Nevertheless, if the volunteer assumes responsibility to act, even when there is no duty, he or she thereby assumes the duty of acting carefully.¹⁰ Simply stated, if a volunteer decides to help an injured party when there is no responsibility to do so, he or she undertakes a duty not to make the situation worse, even though there was no duty to help the injured party in the first place.

A plaintiff seeking to recover for damages caused by negligence must not only show that there was a failure to perform a legal duty, but also that the injury was reasonably "foreseeable" to the volunteer or the sponsoring organization.¹¹ If the injury that occurred could not have reasonably been foreseen, liability for negligence does not arise. This is because the law does not require the conduct of a reasonable person to be guided by events that are not reasonably foreseeable. In essence, "freak accidents" will not give rise to liability in negligence. However, liability may arise where some harm could have been antici-

pated, but the precise manner in which the harm ultimately occurred could not.¹²

Intentional Misconduct

If a volunteer intentionally injures someone, he or she will be liable for the injury caused.¹³ If a volunteer intentionally injures someone, the organization using his or her services may not be liable, even if the volunteer was acting within the scope of duties.¹⁴ Thus, a volunteer may be solely liable for the misconduct. Furthermore, intentional misconduct may be grounds for "punitive damages." These damages are awarded to the injured party, not as compensation for his injury, but to punish the wrongdoer.¹⁵ Awards of punitive damages can be very significant, and sometimes exceed by far the amount of actual, compensatory damages awarded to a plaintiff.

Invasion of Privacy

People have an interest in maintaining their privacy and this right to privacy is recognized in the state of Maryland.¹⁶ Under certain circumstances, an individual may recover damages from another person, including a volunteer, for invasion of privacy.

Volunteers who deal with government or medical records probably have the most exposure to this type of potential liability. Both the federal government and the state of Maryland have statutes that limit the disclosure of certain government records.¹⁷ In addition, both the federal government and the State have statutes that render medical and mental health records confidential.¹⁸ These categories of records generally are exempt from disclosure under the Maryland and federal statutes governing disclosure of records, or the public's access to such records is significantly limited.¹⁹ Therefore, government agencies, hospitals and other health care providers that use the

services of volunteers who have access to such records should ensure that their volunteers are trained in the requirements of these laws.

Standard of Care and Negligence

Negligence is, by far, the most common basis upon which plaintiffs seek to hold others responsible for their injuries. Actions for other types of wrongs occur less frequently particularly with respect to volunteers. The following pages will therefore explore the legal issues and defenses in negligence actions in some detail.

Negligence is the most common basis upon which plaintiffs seek to hold others responsible for their injuries.

The standard of care, based on the conduct of a "reasonable person," is simply the "measuring stick" by which society evaluates a person's conduct. Conduct that falls below the standard of care is

negligent. Naturally, not all unintentional actions that cause another person to be injured constitute negligence.²⁰ Only when the injury was caused by a person doing something unreasonable, that is by doing something that one using ordinary care would not do, or by not doing something that one using ordinary care would do, is the act or omission considered to be negligent.²¹ Because this standard of care is objective, it will remain the same with each new adult defendant. The failure to use adequately qualified volunteers can constitute negligence by the organization.

Children

A child is held to a lesser standard of care than is an adult.²² The standard is flexible and is more subjective than the adult standard because each child's conduct is measured not against what an adult would or would not have done, but what a reasonable child of the same age, experience and intelligence would have done or not have done under the circumstances.²³ In other words, it is possible for the conduct of a child to cause harm to another person and for that harm to go uncom-

pensated, even though that very same conduct, if undertaken by an adult, would be considered negligent conduct.

An organization using children as volunteers might be liable for injury caused by a child volunteer's actions if it is considered to be negligent for the organization to have used a child volunteer of that age and experience for a particular duty. Any organization thinking of using the services of children as volunteers should first consider if they possess the skills, experience and intelligence necessary to perform the services, just as any organization should establish criteria for the participation of any volunteer. If the potential for harm to others is foreseeable, though it may not be foreseeable to the particular child, then the organization may be held liable for any resulting harm caused to others on a theory of vicarious liability (responsibility for a person's negligence) or negligent entrustment (entrusting something to a person who could not handle the responsibility).²⁴

Professionals

Volunteers who are "professionals," people duly licensed to engage in a learned profession, such as physicians, dentists, nurses, architects, accountants or lawyers, may be held to the standards imposed by that particular profession. Professionals are obligated to exercise that degree of care and skill ordinarily employed by members of that profession under similar conditions and like circumstances.²⁵

All professionals who serve as volunteers should carefully consider their needs for insurance against liability for negligence while performing volunteer work, as well as work performed for compensation. In some cases, malpractice insurance may not cover volunteer work. Insurance and other risk management concerns are treated in more detail in Chapter Three of this publication.

Statutory Protection from Negligence Suits for Volunteers

This section discusses the Maryland statutes that protect a volunteer from civil suits for ordinary negligence arising in the course of volunteer work.²⁶ In addition, volunteers serving state and local government agencies in Maryland may qualify for protection from civil suit under the Maryland Tort Claims Act or the Local Government Tort Claims Act. These statutes are also discussed in later sections.

Protection for Individual Volunteers

Maryland, like many other states, has enacted statutes that change the basic rule that volunteers are liable for injuries caused by their negligence. These statutes, the terms of which vary according to the type of organization the volunteer is serving, protect certain volunteers from liability for mere negligence. As noted below, they do not apply to all volunteers and do not give volunteers complete immunity from liability.

Volunteers working for any charitable organization that is exempt from taxation under Section 501(c)(3), (4), (5) or (6) of the Internal Revenue Code²⁷ are not liable for their own actions beyond the limits of any personal insurance the volunteer might have, unless the actions constituted reckless, willful, wanton or intentional misconduct.²⁸ The volunteer for such organizations is not liable for the conduct of others unless the volunteer knows of, authorizes, approves or ratifies the conduct.²⁹ Unlike the protection granted for volunteers working for some other types of organizations, there is no minimum insurance requirement.

Community or Charitable Organization Volunteers

For a person volunteering for an athletic club, a broad range of charitable organizations, a community (neighborhood) association, a homeowner's association, a cooperative housing associa-

tion or a condominium owners' council, the law offers protection from responsibility for ordinary negligence if the organization maintains insurance covering its volunteers' actions in certain minimum amounts set forth in the statute.³⁰

In other words, if the organization does not carry insurance in the required amounts, a volunteer may be fully responsible for his or her own negligence. In addition, a volunteer may be held responsible for his or her acts or omissions if he or she acted with gross negligence or with malice toward the injured party.³¹ The protection granted under this provision of law is less broad than the protection on discussed in the preceding section because of this statute's requirement that the organization carry certain minimum amounts of insurance.

Volunteers in a community recreation program are protected from liability for injuries caused while providing volunteer services unless they allowed unsupervised activities, acted willfully or with gross negligence or the damage arose from negligent operation of a motor vehicle.³² Athletic officials, including referees and umpires for recreation events, are immune from liability for acts that do not amount to willful, wanton or grossly negligent conduct.³³ This protection does not depend on either the volunteer or the community recreation program maintaining any level of insurance.

Emergency, Medical Care and Fire Company Volunteers

Maryland's General Assembly has enacted a series of laws that, in effect, provide protection

from liability for simple negligence to many classes of volunteers and charitable organizations who provide health care or emergency medical care services free of charge.³⁴ Maryland's courts have had only a few opportunities to examine the scope of the protection of these statutes. However, these statutes provide significant protection for volunteers and should be carefully examined by both volunteers and their sponsoring organizations to develop a comprehensive risk management plan, incorporating if necessary sufficient liability insurance to cover those areas of potential liability not treated by the statutes.

An individual who voluntarily provides assistance or medical care at the scene of an emergency, or while in transit to a medical facility such as a hospital, will not be liable for acts or failures

An individual who voluntarily provides assistance or medical care at the scene of an emergency or while in transit to a medical facility such as a hospital will not be liable for acts or failures if he or she acts in a reasonably prudent manner, does not accept payment for the assistance, and hands over the care of the injured party to an appropriately-trained individual.

if he or she acts in a reasonably prudent manner, does not accept payment for the assistance, and hands over the care of the injured party to an appropriately-trained individual.³⁵ In this context, the term "volunteer" includes people with medical training as long as they provide service voluntarily and without payment. In addition, volunteers with a fire and rescue company are expressly protected from liability for their acts or omissions during the course of their duties, unless the act or omission is willful or grossly negligent.³⁶ In other words, if as a volunteer firefighter, the volunteer intentionally does something that will cause harm, or that is extreme and outrageous but less than intentional, he or she may not be protected from liability.

Liability is slightly different with respect to a fire or rescue company's operation of a motor vehicle. If the fire or rescue company is self-insured, it may be liable up to the required minimum liability insurance limits required by law. If the company is insured by an insurance company, it may be liable up to the limits of the actual policy.³⁷

Volunteers, including licensed physicians who provide service without payment, essentially are protected under the "Good Samaritan" laws from possible suits for providing health care to any person who seeks health care from a charitable organization.³⁸ Under this law, licensed hospitals are not included in the definition of a charitable organization; therefore, if a person is volunteering at a licensed hospital, he or she may be personally responsible for negligence.³⁹ If he or she provides health care at a charitable organization as a volunteer, he or she may not be held responsible for an injury not covered by insurance, unless he or she was grossly negligent or intentionally and willfully acted wrongly.⁴⁰

School Athletic Team Physicians

On July 1, 1991, the General Assembly extended the protection of the law to physicians volunteering their services at intermural and interschool scholastic sports programs, whether at a public or non-public school, or at an institution of higher learning such as a community college or university.⁴¹ Again, this statute protects the physician only from liability for conduct that does not amount to willful, wanton or intentional misconduct.⁴² Moreover, the physician's immunity extends only to treatment administered at the site of the sports program, at any practice or training for the sports program, or during transportation to or from the sports program, practice or training.⁴³ Significantly, there is no provision to limit liability to the amounts of the physician's insurance coverage as in some other "Good Samaritan" statutes discussed in this chapter.

Non-Statutory Legal Defenses Available to Volunteers

Waiver

In the volunteer context, the waiver defense essentially is a contractual defense that is bargained for between the volunteer or the organization sponsoring the volunteer and the person or groups receiving the volunteer's services. It is contractual because the person receiving the services of the volunteer contractually agrees to give up his or her right to sue the volunteer or the sponsoring organization for possible negligence. A waiver, to be completely effective, must be in writing signed by the recipient of the services, and should be drafted before services are rendered.

However, it should be recognized that if a waiver agreement is challenged, a court will have the final word on whether it is effective or not. And, its effectiveness may depend on a wide variety of factors beyond the scope of this publication.

Though waiver agreements necessarily will vary with the nature of the volunteer's work, they essentially provide that the recipient of the volunteer's services is aware that the services are being provided, and that the recipient agrees to hold the volunteer and sponsoring organization harmless for any possible negligence of the volunteer or sponsoring group.

Assumption of Risk

When a volunteer or a sponsoring organization is confronted by a lawsuit for negligence, assumption of the risk frequently is used to support the validity of a waiver signed by the recipient of the volunteer services. The assumption of risk defense applies when a person voluntarily puts himself or herself in a position where there is a known risk of an injury, and where the person assumes the responsibility for the injury should an injury occur.⁴⁴

Contributory Negligence

The defense of contributory negligence may be asserted in cases involving negligence on the part of both the recipient of the volunteer's services and the volunteer. This doctrine will not relieve a volunteer of his or her duty to use due care in the performance of volunteer services. Rather, it may prevent the recipient of volunteer services from recovering compensation by reason of the recipient's own negligence.⁴⁵

This defense, like the defense of assumption of risk, is an affirmative defense that must be proven by the volunteer to avoid the recipient's suit for negligence. Nevertheless, this contributory negligence defense is limited in its application by the doctrine known as the "last clear chance."⁴⁶ Even though the recipient put himself or herself in danger, if the volunteer knew of the danger and had the opportunity, the "last clear chance" to prevent the injury, the volunteer still could be held liable for negligence.⁴⁷

Liability of Government Volunteers

Like many states, Maryland has special statutory protection for government units and their employees and volunteers. The legal liability of volunteers for State agencies is carefully limited in most cases by the Maryland Tort Claims Act (MTCA). The MTCA sweeps State volunteers within the protective ambit of sovereign immunity, and thus protects volunteers to the same extent as State employees. Nevertheless, certain actions still may remain outside the scope of that protection. In addition, there are statutes applying to local governments, school boards and other local government bodies.

State of Maryland as Defendant

The Defense of Sovereign Immunity

The concept of sovereign immunity is the starting point in analyzing the potential tort liability of volunteers to or for the State of Maryland. As

Maryland's highest court has stated, "It is an elementary and firmly established principle of municipal law that the state cannot be sued in its own courts without its consent."⁴⁸ One early rationale for this principle was that "the king can do no wrong," but it has also been suggested that perhaps the king (or the state) can do so much wrong that it would be impossible to make the sovereign (and the taxpayers) pay for all such wrongs on the same basis as private parties.⁴⁹ In any event, the principle had firm roots in English common law and is well established in the United States and Maryland.

The great usefulness of the principle of sovereign immunity to state governments has been tempered in practice by compassion for the victims of State wrongs, and by concern for the individual State employees who might be sued personally for injuries that really arose from their official State duties. Maryland has voluntarily waived its sovereign immunity for certain types of liabilities, and has allowed injured individuals to file claims and ultimately sue the State for alleged wrongs committed by State personnel to the extent provided in the MTCA as discussed below. More importantly for volunteers, the State also has protected State personnel from personal liability for torts for which the State has waived its immunity.⁵⁰ Basically, if the individual committed the alleged tort in the course of official State duties, then the State itself will defend the action and accept the liability, and the individual will be protected.

The Maryland Tort Claims Act

State personnel as defined by MTCA includes, of course, regular State employees, but it also includes "an individual who, with or without compensation, exercises a part of the sovereignty of the State."⁵¹ The definition specifically includes members of State boards, commissions and similar State entities. In addition, a person who is providing a service to or for the State, who is not paid in whole or in part by the State,

and who satisfies all other requirements for designation as State personnel, may be protected under the MTCA.⁵²

To qualify for protection under the MTCA, the incident in question must have occurred within the scope of the public duties of the State personnel and have been committed without malice or gross negligence. This test applies both to the State's waiver of immunity and to the protection of State personnel.

The "scope of public duties" may be difficult to determine in certain circumstances, but it generally includes all matters within the delegated or instructed authority of an employee or volunteer. In essence, it includes all matters within the scope of the individual's employment.⁵³ Moreover, it specifically includes "any authorized use of a State-owned vehicle by State personnel."⁵⁴ For example, a volunteer on an errand for a State agency probably would be covered for an ordinary automobile accident in the course of the errand. But, the volunteer probably would not be covered if he or she detoured from the errand to stop at home for personal business and then was at fault in an accident pulling out of his or her driveway.

The other possibly disqualifying factors, malice and gross negligence, are also difficult to define precisely. "Malice" has been defined in different circumstances as acting without probable cause or forming an improper motive,⁵⁵ as being influenced by hatred and spite and indulging in deliberate and willful mischief,⁵⁶ or as acting with a reckless disregard for the truth or using unnecessarily abusive language.⁵⁷ "Gross negligence" is merely a higher level exaggerated, or more serious form of ordinary negligence and therefore can also apply in many circumstances. It has been

defined as "a technical term, . . . [meaning] the omission of that care which even inattentive and thoughtless men never fail to take of their own property, . . . [and implying] malice and evil intention."⁵⁸

Despite the broad scope of the current state waiver for tort claims, certain types of potential liabilities (in addition to those arising from grossly negligent or intentional conduct) are not covered

by MTCA. So-called "constitutional torts," which are violations of implied causes of action deriving from the State or federal constitutions, may not be covered by the MTCA. Nor are civil rights claims or other actions based directly on State or federal statutes. The more common types of these claims include violations of due process or discrimination in employment or administration of some state program. Certain

intentional torts also may not be clearly included or may even be excluded under the MTCA, depending on the elements necessary to prove them, and thus protection for such torts will depend on the circumstances and future litigation or statutory developments and various other defenses are still available in any case not covered by the MTCA.

Merely having some form of immunity or a good defense on the merits is not always enough to prevent people from suing. The question of who will provide and pay for a volunteer's legal defense also is important. The MTCA does not address this issue, but separate statutory provisions deal with representation of State officers and employees for all types of suits. The Attorney General's office policy is to interpret the MTCA and these statutes in a parallel manner. If a volunteer acts within the scope of authorized public duties and without malice or gross negli-

To qualify for protection under the MTCA, the incident in question must have occurred within the scope of the person's duties and have been committed without malice or gross negligence.

gence, then he or she probably will be entitled to sovereign immunity in a tort action under the MTCA and to legal representation provided by the State. Such representation is contingent on an investigation into the facts by the Attorney General's office, requires a separate agreement and may be declined if a volunteer has defense coverage available through an insurance policy.⁵⁹ In most cases, the question of who will pay for a legal defense under MTCA will not arise, because the Act provides immunity from suit, and not simply immunity from liability.

The Attorney General's office by statute cannot represent individuals in criminal proceedings. Nevertheless, criminal charges sometimes are brought that relate solely to the performance of public duties, and if the charges do not produce an adverse decision, the individual may apply through the Attorney General's office to the Board of Public Works for reimbursement of legal fees and costs incurred in defending against such charges.⁶⁰

Legal representation provided by the State does not obligate the State to pay any settlement or judgment that results from the case. But, if the claim is covered by the MTCA, the individual would be immune and the State would be liable. In other cases against individual volunteers, the individual may apply through the Attorney General's office to the Board of Public Works for payment of any settlement or judgment.⁶¹ The Board's decision is completely discretionary and is not judicially reviewable. But, the Board usually has been disposed towards approving payment where recommended by the Attorney General's office. The payment may be made from the Board's emergency fund or from the relevant agency's budget.

Certain State agencies or bodies have additional or different immunity protection. For example, the immunity of members or employees of a board of supervisors of a soil conservation district parallels that under the MTCA, but is sep-

arately set forth in a statute that does not expressly mention volunteers.⁶² The Mass Transit Administration also has a separate statutory provision dealing with the immunity of the agency itself and its "officers, agents, and employees."⁶³ Volunteers could be considered agents of the MTA, but the coverage may not be as broad as for all volunteers providing services "to or for the State" as under the MTCA.

Local Government as Defendant

Local Government Tort Claims Act

In 1987, the Maryland General Assembly granted broad based protection for volunteers by way of the Local Government Tort Claims Act.⁶⁴ The LGTC applies to local government employees, which are defined to include "a volunteer who, at the request of the local government, and under its control and direction, was providing services or performing duties."⁶⁵ The LGTC also defines "local government" as county governments, municipal corporations, Baltimore City, The Maryland National Capital Park and Planning Commission, the Washington Suburban Sanitary Commission, a community college or board of trustees for a community college, certain public libraries, special taxing districts, a nonprofit community service corporation incorporated under Maryland law, and certain housing authorities.⁶⁶

The statute states that local government volunteers will be provided with legal defense in any action that alleges damages resulting from their tortious acts or omissions committed within the scope of their volunteer work with the local government. Also, no one may execute a judgment against a volunteer for tortious acts or omissions as long as the volunteer acted within the scope of his or her volunteer work with a local government, except that the volunteer shall be fully liable for damages awarded in an action in which it is found he or she acted with malice. The LGTC also specifies that the rights and immunities granted therein to a volunteer are contingent

upon the volunteer's cooperation in the defense of any actions.⁶⁷

The LGTC also limits the liability of a local government to \$200,000 for an individual claim, and \$500,000 per total claims that arise from the same occurrence for damages resulting from tortious acts or omissions of a volunteer. The LGTC expressly provides that a local government may not assert governmental or sovereign immunity to avoid the duty to defend or indemnify a volunteer as defined by the statute, but the local government may not be held liable for punitive damages.⁶⁸

The protection of volunteers also has been extended by State law to certain categories of volunteers performing specific services. County boards of education are required to be joined as parties to an action against county board volunteers (defined as individuals who, at the request of the county board, and under its control and direction, provide services or perform duties for the board without compensation) in which it is alleged that damages resulted from a tortious act or omission committed by volunteers within the scope of their services or duties. Within the context of their performance of services for a county board of education, volunteers who act within the scope of their duties are not individually liable for damages resulting from a tortious act or omission beyond the limits of any personal insurance the volunteers may have unless the damages were the result of their negligent operation of a motor vehicle, or the damages were the result of their willful, wanton, malicious, reckless or grossly negligent act or omission.⁶⁹

In addition, in actions against county board volunteers acting within the scope of their duties that result in a judgment in tort for damages, the judgment shall be imposed against the county board

only, and may not be collected against the county board volunteers individually.⁷⁰ Also, specifically protected by the State education statute are volunteer aides who are used to assist regular school board employees in their assignments. Provided the volunteer aides are not used to supplant educational personnel, the volunteers are considered to be agents of the county board for the limited purpose of comprehensive liability insurance coverage provided by the county board, and for permitted Worker's Compensation coverage.⁷¹

To encourage volunteer participation and avoid the risks and publicity of a civil suit, an organization may purchase liability insurance to protect itself and its volunteers.

In 1990, the Maryland General Assembly gave certain immunity from civil liability to certain school employees who make reports required by law, or to school officials or to a parent regarding a student's suspected use, possession or sale of alcoholic beverages or controlled dangerous substances.⁷² The protection of this statute

extends to health, administrative, educational or support employees or volunteers of public, private and parochial schools.⁷³ But, the immunity granted by this statute depends upon the employee or volunteer having acted upon reasonable grounds, that are not specifically defined in the statute, but must be determined in each individual case.⁷⁴

Charitable Organizations as Defendants

The Defense of Charitable Immunity

In Maryland, charitable organizations generally are protected from civil liability under the doctrine of charitable immunity. If the charitable organization is an instrument of the State, the doctrine of sovereign immunity may be applicable.

Maryland's doctrine of charitable immunity has its roots in early English cases and rests on the "trust fund theory."⁷⁵ This theory is based on the

belief that contributions to charity are given for the benefit of those who are in need of charity and are not given to pay damages out of those trust funds to assist those who committed an injury.⁷⁶

Accordingly, in Maryland, "damages cannot be recovered from a fund held in trust for charitable purposes."⁷⁷ Where the doctrine of charitable immunity prevents recovery from the organization, the injured party may be limited to recovering any compensation from the individual wrongdoer or from the organization's insurance.⁷⁸ Nevertheless, if the wrongdoer is a volunteer, statutes may operate to prevent or to limit recovery from the volunteer.⁷⁹ Maryland has failed to adopt the rule followed in some states where the charitable organization can be held liable for negligent hiring or supervision.⁸⁰

To encourage volunteer participation and avoid the risks and publicity of a civil suit, an organization may purchase liability insurance to protect itself and its volunteers. Maryland statutes allow certain nonprofit organizations to pool resources for the purchase of liability insurance,⁸¹ but acquiring insurance coverage is entirely voluntary. If the organization chooses to purchase insurance, the insurer is prohibited from asserting the charitable immunity defense,⁸² and the injured party may recover up to the limits of the policy for any covered injury. However, if the insurance policy does not cover the type of injury that forms the basis of the suit, the doctrine of charitable immunity will prevent recovery.⁸³ For example, a hospital patient injured by a doctor's negligence may be prevented from suing the hospital unless the hospital has insurance covering professional negligence.

Although the charitable immunity and sovereign immunity doctrines may prevent an injured party's right to recover from the organization, various statutes permit charitable organizations and political subdivisions of the State to pool their resources for the purchase of liability insur-

ance.⁸⁴ In addition, State agencies may be covered by the State Insurance Program.⁸⁵

These organizations or state agencies are under no obligation to purchase insurance, but where insurance covers the specific claim, an injured party may recover up to the policy limits.⁸⁶ The insurance policies will vary from policy to policy, as well as from organization to organization. A specific claim may not be covered. If a claim is not covered, the charitable immunity or sovereign immunity doctrine may not permit recovery from the organization.⁸⁷

The Volunteer as Plaintiff

Volunteers in State Government

If a person is injured while working as a volunteer for the State, the doctrine of sovereign immunity prevents him or her from filing a suit against the State unless he or she can make a valid claim under the Maryland Tort Claims Act. Therefore, remedies under this statute should be carefully, and quickly, examined, because the time during which a claim must be filed or lost forever is quite short.⁸⁸

Volunteers in Fire or Rescue Companies

The state of Maryland requires insurers who provide liability insurance policies to fire and rescue departments or companies to offer coverage for volunteer members and for any other individual who provides assistance during an emergency.⁸⁹ There is no requirement that a fire or rescue company actually purchase any liability coverage, but to encourage participation of volunteers many such companies offer coverage.

Volunteers in Public Schools

Public school volunteer aides are, while performing their duties, covered under the school's liability insurance policy.⁹⁰ The State's public schools are required to have a liability insurance policy or

to meet a minimum standard of self-insurance.⁹¹ Volunteers in public schools will be covered to the extent provided by statute by whatever liability insurance the county board of education provides for the school.

As a general matter, volunteers are not covered under the Workers' Compensation Act. To be covered by the Act, one must be an "employee," which generally is defined as someone receiving remuneration or payment for his or her services. In other words, a person not receiving compensation for his services is not an "employee" and is not covered by the Act.⁹² Though the Act must be consulted to determine if particular volunteers are covered by the Act, generally, volunteer firefighters and rescue squad members, members of police departments, members of civil defense corps in the most populated centers in Maryland and the deputy sheriffs in Cecil County are considered to be "covered employees" within the meaning of the Act.⁹³ Volunteer school aides expressly are covered by workers' compensation while performing their duties.⁹⁴ Otherwise, most volunteers are not covered within the Act unless a specific exemption is given, because a covered employee must be under a "contract of hire or apprenticeship, express or implied."⁹⁵

If a volunteer has been injured by a fellow volunteer or employee of the organization while working for the State or local government as a volunteer, he or she may wish to file a suit against the State or local government employee or agent responsible for the negligent act causing the injury. But such suit may come within the confines of the Maryland Tort Claims Act or the Local Government Tort Claims Act.

In addition, whether a suit against a State or local government employee is prohibited by sovereign immunity will depend on many questions, including whether the injury occurred within the scope of public duties.⁹⁶ A suit against an employee of a charitable organization may not be prohibited

unless the employee also is a volunteer and within the protection of one of the "Good Samaritan" laws.⁹⁷ If these hurdles are passed and the suit against the organization is not prohibited by sovereign or charitable immunity, the organization may be liable to the volunteer for its employee's negligence.⁹⁸

Volunteers in Non-Governmental Agencies

An injured volunteer working for a non-governmental organization may have the same right to sue the organization or its employee or agent for negligence as any other plaintiff would have. The volunteer under this situation will not be restricted by the Maryland Tort Claims Act, Local Government Tort Claims or by the exclusive remedy provided to employees under the Workers' Compensation Act. If the organization is a charitable one, the volunteer may be restricted by the doctrine of charitable immunity. But as noted above, the presence of insurance in sufficient amounts may leave both the organization and the responsible employee liable for a volunteer's injuries to the extent of the policy limits. The outcome is uncertain, though, because a policy that covers liability claims **against** volunteers ordinarily will not cover claims **by** volunteers.

chapter two

BOARD MEMBER LIABILITY AND RESPONSIBILITY

Introduction

In the past, serving on the board of directors or as an officer of a charitable organization may have been considered no more than an honorary position. Today that certainly is not true because volunteer board members and officers have a serious obligation to the organizations they serve. Failure to meet that obligation has legal implications.

Volunteer board members and officers have responsibilities and duties, and need to be aware of how they can avoid errors and omissions that may lead to legal liability. The following are some general guidelines applicable to volunteer board members and officers of tax-exempt not-for-profit organizations. Specific questions should be addressed by an organization's lawyer.

Guidelines

Participation

Every board member must actively participate in the organization. An agreement to serve on the board of directors of a charitable organization means a willingness to commit the time and attention necessary to adequately serve the organization. This means, first and foremost, attendance at board meetings. Absence from meetings is not a defense to a lawsuit and board members cannot avoid legal responsibility if they were not present when certain decisions were made. It is their obligation to be familiar with the issues fac-

ing the organization, especially financial issues, and to make informed decisions about those issues. The first step in making an informed decision is regular attendance at board meetings and participation in committee meetings, if applicable.

Conflicts of Interest

A potential conflict of interest arises any time an action by a board of directors could result, either directly or indirectly, in the board member's personal gain, or could benefit a person related to him. Board members always must put the interest of the organization above their own. This is especially true if the organization is considering a business transaction with an entity in which a board member or one of his or her relatives has a substantial stake. For example, when an organization's insurance contract is awarded to a corporation in which the board member or his or her family has an interest, there is a potential conflict of interest.

It is the board member's obligation to use the charitable organization's funds in an effective manner that is in the best interest of the organization. Transactions with entities in which board members have an interest should be avoided. If the situation arises, however, where it is in the best interest of the organization to do business with a company that a member is affiliated with, all of the details of the transaction, including the extent of the affiliation, must be fully disclosed to all board members before the transaction is initiated. The involved board member should not vote on the matter. Furthermore, the transaction must

be fair to the organization and it should not pay a price above fair market value.

Board members also must put the best interests of their organization ahead of their own where business opportunities are concerned. If members become aware of an opportunity that could benefit their organization, they must present it to their organization first before considering it for themselves or any other group.

Good Judgement⁹⁹

Board members have a duty to care for the organization's affairs in good faith and with at least the same degree of diligence, care and skill that reasonable, prudent people in similar positions would exercise under similar circumstances. Good faith and good intentions are not enough.

This "duty of care" requires the board to always act with knowledge and after adequate deliberation. The board must carefully set organizational policy and regularly oversee the administration of such policy by competent staff. This entails appointing and regularly reviewing the chief administrative officer of the organization. The board, without getting involved in day-to-day activities, must establish and monitor basic organizational policies and procedures which:

- o Clarify and assure adherence to the organization's purposes, and monitor effectiveness in achieving results.
- o Assure a personnel program that provides competent staff.
- o Assure reasonable staff compensation and professional consulting fees.
- o Provide sound investment and management of organizational funds and assets not expended directly for charitable purposes to yield a reasonable return without undue risk.
- o Protect the organization's property, including reasonable provision for safekeeping, replacement and divestment procedures that will benefit the organization.

- o Require board review, adoption and monitoring of the annual budget.
- o Ensure financial resources to conduct organizational activities.
- o Request regular financial information and, if appropriate, an annual independent audit of the organization's financial affairs.
- o Provide for competent legal counsel to assure compliance with applicable local, state and federal laws.
- o Provide for regular meetings of the board and its committees and adequate reports on organizational activities.
- o Maintain adequate minutes of the board, its committee meetings and other pertinent organizational records.
- o Provide for careful selection and orientation of new board members.

Statutory Limitations of Liability

Maryland law provides some limitations of liability for volunteer officers and directors of charitable organizations that are exempt from taxation under Section 501 (c)(3), (4), (5) or (6) of the Internal Revenue Code. An organization's lawyer can determine if the organization falls within these sections of the Internal Revenue Code. Generally, under the law, volunteer officers or directors of these charitable organizations are not liable for damages resulting from their actions or arising out of their service to the organization *beyond* any personal insurance they might have, unless:

- The volunteer knew or should have known of an omission of another volunteer and the volunteer authorizes, approves or otherwise participates in the action or omission; or
- After an action or omission described above occurs, the officer or director, with full knowledge of it, ratifies the action or omission.¹⁰⁰

This limitation to liability, however, does not apply to suits brought by the Attorney General upon referral by the Secretary of State for certain willful violations of the Maryland Charitable Organization Solicitations Law.

This law further provides that officers or directors are not liable for damages beyond the limits of their own personal insurance for any action or omissions they may have committed, unless officers or directors acted in a manner that constitutes reckless, willful, or wanton conduct, or was intentional.¹⁸¹

Charitable Organization Solicitations

Maryland law regulates charitable organization solicitations and contains very specific guidelines regarding registration with the Secretary of State and filing requirements.¹⁸²

Unless exempt, any charitable organization located in Maryland that solicits contributions, either inside or outside of the state, or any charitable organization that has funds solicited on its behalf, must file a registration statement with the Secretary of State before beginning any solicitation activities. Thereafter, an annual report must also be filed with the Secretary of State. The law specifically provides that the "president, chairman or other principal officer of the charitable organization is personally responsible for timely filing of the registration statement and the annual report." Certain organizations are exempt from these requirements, including those that raise less than \$25,000 a year from the public. To determine if an organization may be exempt, it always is prudent to contact a lawyer.

The law is very specific about what information must be contained in the registration statement

and annual report. The statute also includes specific details regulating the solicitation and expenditure of funds. For example, the law provides that funds must be expended in a manner consistent with the purpose of the organization and the solicitation that generated the contribution. In addition, solicitation should be free from deception. Written solicitation should include a notice explaining the availability of financial information on request. Any questions regarding compliance with these requirements should be directed to:

*Office of the Secretary of State
Charitable Division
State House
Annapolis, MD 21401
1-800-525-4510*

The law also provides for criminal penalties, including a \$5,000 fine and up to one year

imprisonment, for willfully failing to comply with its requirements. A director or officer of a charitable organization can be subject to these criminal penalties. In addition, an officer or director who violates the requirements of this law also may be liable to the donor for the amount of the donation. Punitive damages also can be assessed in an amount equal

***Absence from meetings
is not a defense to a
lawsuit and board
members cannot avoid
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they were not present
when certain decisions
were made.***

to three times the amount of the donation. Finally, an officer or director of a charitable organization is deemed to be a fiduciary for the charitable funds solicited, collected and expended. As a fiduciary, the officer or director is required to manage the funds with scrupulous good faith for the beneficiaries of the charitable organization and not for the officer's personal benefit.

It is imperative that officers and directors of charitable organizations be familiar with this law and take reasonable steps to ensure that their organization is in compliance with its provisions.

Conclusion

The previous section presents the most stringent measures to be considered by board members and officers serving charitable organizations. The purpose is not to intimidate or inhibit anyone asked to serve in such a capacity, but to provide the broadest and most generic information available on the guidelines to follow. Each organization needs to review its own specific circumstances and management practices to determine the type and degree of liability protection in place or needed to protect the board, staff and officers, to enable them to operate efficiently and effectively in pursuing the organization's mission.

chapter three

RISK MANAGEMENT STRATEGIES

Introduction

As part of the management function of any organization decisions must be made concerning the treatment of exposure to loss faced by the organization. This decision making authority may be held by various individuals within the organization such as the director, the chief financial officer, the personnel officer or a committee made up of all these individuals. If the organization is large enough there may be a formal position of Risk Manager. Notwithstanding the person or persons who have this authority, the important issue is that this function should be defined and addressed and a formal program of risk management should be implemented.

The purpose of this section is to generally describe and outline the risk management process to be used to develop and implement the program.

Risk Management Process

Risk management is the discipline within the management process dealing with exposures to pure risk. Pure risk is the chance of financial loss not offset by the opportunity for possible financial gain.

For example, the manager of a hospital auxiliary gift shop who may experience a fire that destroys her inventory is exposed to pure risk.

This gift shop manager also has an exposure to speculative risk, which is the chance of financial

loss offset by the possibility of financial gain. For example, she may experience financial loss because of lack of sales but will experience financial gain if sales are high. Speculative risk exposures, unlike pure risk exposures, are not subject to risk management treatment.

Maybe not in a technical sense, but as a practical matter, volunteer activities often bring potential losses with the potential benefits, just as all activities do, and should be managed with attention to risk.

All entities, from large profit-making organizations to small charitable organizations to individual volunteers, are exposed to pure risk and must make risk management decisions.

The goal of risk management is to forecast and then take steps to alleviate the effects of potential pure risk losses. To accomplish this goal certain steps must be taken, including:

- o Identify the exposures to loss.
- o Measure the possible impact of the potential losses.
- o Select the appropriate alternatives to deal with these exposures.
- o Implement the selected program.
- o Monitor the results and change the program as needed.

The first step, identifying exposures, involves a complete review of an organization's functions and assets, including all program activities, interactions with other people or organizations, ownership of real and personal property and access to financial resources. This information is gathered by inspecting and inventorying property, reviewing contracts and agreements, auditing financial

records and accounts and interviewing program staff and volunteers.

The second step in the risk management process involves measuring the impact of a potential loss to the organization based on the information gathered in the first step. For example, a nonprofit organization that owns an office, would have a significantly greater exposure to loss by fire than one which is renting that same office space. Both parties would be exposed to loss of their property and loss of use of the office, but the owner also would be exposed to loss of the building itself.

This step should take into account two factors: the likelihood that a loss will occur and the magnitude of the possible loss. An owner would be very concerned about fire losses because this type of loss has a relatively high chance of occurring and could result in a high cost. Broken windows also might have a high chance of occurring but a lower probable cost. Destruction of the building by a falling meteor would have an extremely low chance of occurring but a very high probable cost.

Having identified the exposures to loss and measured their possible impact, the next step is to select the best alternative or combination of alternatives for handling the pure risks.

Risk Management Alternatives

Five alternative methods exist for treating loss. The risk management process combines these alternatives into a program that best fits the specific needs of the organization or individual. All alternatives are equally valid and each must be given due consideration. These five risk management alternatives are:

Risk Avoidance

Risk avoidance generally is used in situations that involve a high chance of loss combined with a high anticipated cost. This alternative also would be used in circumstances where the activity or property involved is not essential to the person or organization. For example, a nonprofit nature center may eliminate nature hikes on trails that are near treacherous cliffs to avoid any risk of loss arising out of those trail walks.

Risk Acceptance

Risk acceptance or retention generally is used where the cost of transferring the risk is higher than the potential cost of the risk itself. This alternative often is combined with other alternatives, such as retaining a portion of a risk in the form of a deductible on an insurance policy.

All entities, from large profit-making organizations to small charitable organizations to individual volunteers are exposed to pure risk and must make risk management decisions.

Risk Transfer

Transfer of risk includes the purchase of insurance and is the most commonly used alternative for risks that cannot be avoided and are too great to be retained. While risk transfer may be the keystone to a risk management program, it is almost universally used in combination with other alternatives.

Risk Reduction

Risk reduction involves the implementation of a program to assess and eliminate those circumstances that increase the magnitude of a loss. Installing a hand rail and steps along the steep nature trail is an example of risk reduction. While hand rails do not lessen the chance that a hiker will slip, they do reduce the chance the hiker will fall off the trail and twist his or her ankle.

Risk Prevention

Loss prevention is a program of removing circumstances that cause losses. Installing protective nets on the nature trail to forestall the chance of injury to hikers is an example of a loss prevention technique.

After analyzing the alternatives and selecting the best combination to meet the risk management needs, the next step is to implement the program. This involves taking the necessary steps to make the program a reality. These steps include establishing the loss-reduction or loss-prevention programs, purchasing the desired insurance, amending or entering into agreements designed to transfer risk, determining what exposures should be retained or avoided, and making the financial arrangements to handle the cost of the risk management program.

The final step in the risk management process is to continually monitor and review the program. The purpose of this step is two-fold. The first is to determine if the selected alternatives were correct or if changes should be made. The sooner an error is detected, the less likely that the error will cause harmful results. The second is to ensure there are no changes in the organization that would effect the program and require a different approach. The key to this final step is clear communication between all departments and individuals involved in the risk management process.

Volunteers and Risk Management

From the viewpoint of the volunteer and the law, the risk management process has at least two aspects, one for the organization for which the volunteer is working and the second for the volunteer as an individual.

The Organization

For the organization, the volunteer basically represents the same liability exposure as an employ-

An Example of the Risk Management Alternatives

An example of a pure risk exposure may help clarify how these alternatives can be used. A charitable organization may keep \$50 cash in a petty cash drawer in its office. This financial asset is exposed to numerous loss exposures, including loss by fire, misappropriation by an employee or theft by a burglar. The organization could use any of the five risk management alternatives it deems best to handle this exposure.

The organization could decide that the risk of loss is greater than the benefit of having petty cash readily available, so it ends the practice of keeping the money on hand. This is the use of risk avoidance.

The organization could decide that the loss of this money would not cause any financial discomfort and decide to do nothing. In other words, it accepts or retains the risk.

Organization officials could transfer the risk to another party by amending their insurance policy to include protection of this asset in the event of fire, employee fraud or criminal activity. The risk now is transferred to the insurance company.

The organization could decide that it only needs to maintain \$25 in petty cash. While the exposures still exist, now if there is a loss, \$25 and not \$50 is lost. The risk has been reduced. Further, the organization could decide to place the money in a locked fire-proof safe. These are examples of loss prevention actions.

ee. The volunteer is operating under the direction of the organization. Any injury to people or damage to property stemming from the actions of the volunteer could result in a claim against the organization. The exposure to claims from injury or disease of a volunteer creates a unique situation because, in most instances, volunteers do not fall under worker's compensation statutes. To avoid an unintentional retention of this exposure, the organization should either arrange for a special accident insurance policy or attempt to amend existing liability or worker's compensation policies to cover volunteers.

Maryland's statutes should be reviewed by the organization's legal counsel to determine if there are applicable immunity or liability caps that apply to the organization. Agreements and contracts with other organizations should be reviewed to determine if the activities of volunteers are included within their scope. If the volunteer is performing services such as operating a personal vehicle or performing professional services for which he or she could be held personally liable, the organization should request evidence of financial responsibility. Generally this evidence is in the form of certificates of insurance.

Having considered all aspects of the volunteer's activities within the organization, the "risk manager" must decide which combination of risk management alternatives to employ. Volunteers' activities should be scrutinized for potential risks just as the activities of employees are screened. Failure to consider the activities of volunteers can result in a de facto risk retention, with severe adverse effects.

Risk avoidance often is accomplished, at least to a degree, by the application of immunity statutes. The statute should be carefully reviewed to determine the extent of the law's provisions. In Mary-

land each statute has a specific definition of what constitutes a volunteer. The organization should use the same wording to define its volunteers in those categories is found in the applicable immunity provisions, to avoid nullifying the statute by mistake. Many of these statutes have reporting requirements detailing to whom and when such claims must be made.

If risk transfer by contract is used, the risk manager should review the contract provisions to ensure their intent is clear. Evidence of financial responsibility backing the agreement should be requested. A "hold harmless" clause from a party who does not have the ability to pay claims may prove to be worthless. If the risk management program relies in part on the organization's insurance, the insurance company should be advised of the activities of volunteers. The organization should obtain written confirmation that the organization and/or the volunteers are covered by the insurance policies. Coverage should not be taken for granted and verbal assurance should not be relied upon.

Loss prevention and risk reduction programs for volunteers should follow the same general rule as for employees. Volunteers should be clearly told what duties they are to perform. Training for operation of equipment should be provided when applicable. Background checks should be used to screen potential volunteers. The volunteer should be informed that such checks will be made and written permission should be obtained from the volunteer. (See Chapter Four) The volunteer should be clearly told the proper procedures for reporting incidents that could give rise to claims.

The Individual

From the viewpoint of volunteers, the risk management process involves a review of the extent

Any injury to people or damage to property stemming from the actions of the volunteer could result in a claim against the organization.

to which their own personal insurance coverage may apply to claims arising from their volunteer work. If the volunteer services involve the operation of the volunteer's personal vehicle, the personal automobile policy may provide coverage. Some personal liability coverage may exist under the volunteer's homeowner's or renter's insurance policy. In some cases, professional liability or director's and officers liability policies can be amended to cover volunteer services.

The extent of coverage under the organization's insurance for injuries to and liability of volunteers should be clearly explained in writing. Any applicable immunity statutes should be completely explained to the volunteer along with the necessary procedures to report claims and apply for coverage.

Finally, volunteers should be completely aware of what services they are to perform and should stay within the scope of such services and activities.

Insurance as a Risk Management Alternative

Insurance is the risk management alternative most frequently selected by nonprofit and charitable organizations to handle the majority of their loss exposures. Even though an organization may be *nonprofit*, it is considered by insurance companies to be a *commercial* risk rather than a personal risk. A review of available insurance coverage means a review of applicable commercial insurance policies.

Normally, the major insurance coverage will be provided through a package policy that provides both property and liability coverage. Worker's compensation insurance director's and officer's insurance and an umbrella or excess policy are examples of other types of insurance that generally are written independently of the package.

The following briefly describes the liability cov-

erages available through common commercial insurance policies:

Commercial General Liability Insurance

Commercial general liability insurance coverage provides financial protection to an organization from third party claims alleging personal injury and/or property damage arising from the use of the premises and the operations of the insured. This insurance provides coverage for:

- o Premises/operations liability
- o Products/completed operations liability
- o Contractual liability for all business contracts, subject to some limitations identified within the policy or coverage form
- o Personal and advertising injury
- o Medical payments
- o Fire damage legal liability
- o Broad form property damage
- o Host liquor liability
- o Incidental medical malpractice
- o Non-owned watercraft
- o Limited worldwide liability
- o Extension of protection to employees
- o Bodily injury resulting from use of reasonable force by or at the direction of the insured to protect people or property
- o Automatic coverage for 90 days for newly acquired organizations

Under a commercial general liability policy or coverage form, the organization named on the policy is referred to as the "named insured." Coverage is provided in the event of a law suit alleging bodily injury, personal injury, or property damage resulting from negligent acts committed by anyone working on behalf of the organization, including volunteers. As noted above, it is advisable to confirm that the policy applies to volunteers' activities.

The named insured is not, however, the only entity which is insured under this coverage form. Volunteers, while working for the organization,

are also considered insureds and therefore are covered under this form in the event they also are named in a lawsuit such as described above.

If the organization carried inadequate limits for this loss, or if its insurer were to deny coverage for whatever reason, volunteers might seek protection under personal insurance policies they might carry. For example, most, if not all, standard homeowners and renters policies will cover the individual for bodily injury and property damage claims arising from volunteer work.

Should the limits under this type of policy be inadequate, there would be excess limits available if the volunteer carried a personal umbrella policy. Typically, these personal policies would be considered excess insurance for the volunteer and coverage would first be found within the organization's general liability coverage.

The organization would be protected not only against negligent acts committed on its behalf by volunteers, but also against certain intentional acts such as libel, slander, defamation of character and false arrest and imprisonment. Coverage also is extended for injury arising from assault and battery if such action was committed to protect persons or property. Other intentional acts committed by volunteers would preclude coverage for the volunteer as an individual but would continue to protect the organization.

The use of volunteers creates no additional or unusual limitations to coverage. There are no age limits, for example, that would impair coverage nor any restrictions to the activities volunteers may perform. Prudent risk management, however, would suggest that the organization not permit

volunteers to perform dangerous or unusual activities without proper training and supervision.

Coverage under general liability would protect the named organization against claims arising from incidental medical malpractice committed by volunteers, including in some cases, medical malpractice committed by volunteer medical professionals. This coverage does not extend to the volunteer who is excluded from general liability coverage for professional acts. The volunteer professionals would find coverage for these professional acts under their individual professional liability policy. (See Professional Liability.) This exclusion for the individual volunteers only applies to losses arising from their activities within the scope of their profession. Other activities they might engage in causing injury would be treated no differently than any non-professional volunteer.

When a volunteer is driving his personal automobile on behalf of the organization, and an accident occurs, the volunteer's personal insurance is primary, for both volunteer and organization.

Worker's Compensation and Employer's Liability

This coverage insures against claims for work-related injuries or diseases, suffered by employees, that are compensated by statute and/or are imposed by law as damages. As noted elsewhere in this

booklet, volunteers are generally not covered by Maryland's workers compensation statute. However, there may be reasons why an organization may wish to include volunteers in its workers compensation insurance. Voluntary worker's compensation and employers' liability coverage may be made effective for workers, including volunteers, not subject to a worker's compensation law.

While related, worker's compensation and employer's liability are two distinct types of coverage. Worker's compensation applies to specific state statutes regarding employees injured while

on the job, whereas employees liability does not depend on the statutory workers compensation coverage. A volunteer does not fall under the statute's definition of an employee.

Commercial Automobile Insurance

Insuring the operation of motor vehicles includes both the liability exposure faced by an operator as well as damage protection to the vehicle itself. High limits of liability protection may be required because of the potential of financially damaging court awards. Physical damage coverage is a major consideration as vehicles become increasingly more expensive.

This type of insurance is composed of various coverage:

- o *Liability Coverage* (as required by Maryland law) insures against third party claims arising from alleged bodily injury or property damage to members of the public from operation of the organization's motor vehicle.
- o *Employers Non-Ownership Automobile Liability* is the same as liability coverage except that it applies to claims for accidents due to employees and other agents, such as volunteers, operating their own automobiles in the organization's interest.
- o *Hired Cars Coverage* provides protection to the insured organization for liability for the operation of cars rented or hired by the organization.
- o *Comprehensive* insures the organization's motor vehicles from physical damage from fire, theft and other perils, including glass breakage.
- o *Collision* insures the insured organization against loss from collision or upset of the specified motor vehicle used by the organization.
- o *Medical Payments* reimburses passengers

and operator of a motor vehicle for their medical and/or funeral expenses arising from accidents occurring while they are riding in an insured vehicle, or entering or alighting from a vehicle.

Liability coverage extends to the individual volunteer as well as to the named insured organization for accidents caused by the volunteer while driving a motor vehicle owned by the organization. This coverage is primary and the personal auto insurance carried by the volunteer would be excess over this primary coverage.

When a volunteer is driving his or her personal automobile on behalf of the organization and an accident occurs, the volunteer's personal insurance is primary, for both volunteer and organization.

The organization would have excess coverage for such accidents if the commercial automobile policy provided coverage for "non-owned auto" exposures. Under this coverage extension, the organization's policy would not protect the volunteer.

It is important to realize that a claim for physical damage to a volunteer's automobile are handled completely differently from a claim for liability loss. The organization's automobile policy extends coverage to the volunteer only for losses generated through liability. No coverage is extended to the insured, under this policy, for physical damage to the volunteer's vehicle. For example, if a volunteer uses his personal car on behalf of the organization and the car is involved in an accident or sustains damage in some other circumstance, the only insurance that would apply would be the volunteer's personal insurance policy. If the volunteer did not carry physical damage coverage, commonly referred to as comprehensive and collision, then there is no coverage for this loss.

Umbrella Liability Insurance

This insurance provides excess general liability and automobile limits and, if desired, excess aircraft and watercraft liability limits and also protects the insured from exclusions and gaps in primary liability insurance.

An umbrella liability policy comes into play when primary insurance limits have been exhausted, or when a claim develops that is not covered by primary insurance. Blanket contractual liability coverage, coverage of property in the care, custody and control of the insured, advertisers' liability coverage and protection world-wide are common extensions of coverage provided under an umbrella, but not covered under the primary insurance policies.

Fiduciary Liability Insurance

This coverage pays, on behalf of the insured, for legal liability arising from claims for alleged failure to prudently act within the meaning of the Pension Reform Act of 1974. "Insured" is variously defined as a trust or employee benefit plan, any trustee, officer or employee of the trust or employee benefit plan, employer who is sole sponsor of a plan and any other individual or organization designated as a fiduciary.

Professional Liability Insurance

Depending upon the nature of the insured organization's activities, there may be an additionally imposed liability known as professional liability. This exposure exists when professional activities, such as the provision of medical, legal counseling or engineering services, are conducted on behalf of the organization. This coverage protects the insured organization from claims arising from malpractice, errors, or mistakes made by its employees or volunteers operating on its behalf, in their professional capacity.

It is important to note that this coverage protects the insured organization and does not extend cov-

erage to the individual. For individuals to have coverage, they must maintain individual professional liability policies. While it is possible for the organization to purchase the necessary individual professional liability policy for its employee or volunteer, this practice is very uncommon.

Association Professional Liability

A more recent development in coverages available to nonprofit organizations is the "association professional liability" coverage. This coverage extends protection to both the entity requesting the coverage, the nonprofit organization or association and to any individual who is a director, officer, trustee, employee, volunteer or member of any duly constituted committee of the entity.

Under this form, protection is provided for wrongful acts of the organization or any of the above mentioned individuals. A wrongful act is any actual or alleged error, misstatement, or misleading statement, or neglect or breach of duty of any insured to discharge their duties as a member of the organization.

Coverage does not include damages resulting from bodily injury or property damage. The organization still must carry general liability insurance. These losses are more often associated with claimants being exposed to loss after relying upon what they were told by the organization or association.

The coverage also reimburses the organization for payments they make to directors or officers who may be sued individually for a "wrongful act" discussed above. The extent of this coverage form places it somewhere between the professional liability discussed above and directors and officers liability discussed below.

Directors' and Officers' Liability

A final liability exposure that many nonprofit and charitable organizations face is the individual lia-

bility assumed by its directors and officers who establish the basic objectives and broad policies of the organization.

An organization, to attract qualified individuals to accept board responsibilities, may wish to purchase Directors' and Officers' Liability insurance. This policy extends personal coverage to its board members, directors and officers. (See also "Statutory Limitations of Liability" in Chapter Two.)

It is possible for directors and officers to have adequate insurance coverage for their individual liability board exposures under a homeowner's policy or personal excess policy. These personal policies most typically provide coverage for damages resulting from bodily injury or property damage.

Board members should check with their insurance agent to identify whether their homeowner's or personal excess policy provides coverage for employment claims, such as wrongful termination, discrimination and harassment.

chapter four

PERSONNEL ISSUES IN VOLUNTEER MANAGEMENT

Introduction

In contrast to the law governing employment relationships, the law governing volunteer relationships is surprisingly undeveloped. Accordingly, volunteer managers frequently look to the somewhat analogous field of employment law for guidance to deal with personnel issues in volunteer management.

Interviewing and Screening Volunteers

Screening is the process by which both applicant and organization appraise each other. It is a time when specific requirements and qualifications for the position, work conditions, responsibilities and commitments can be explained by the organization, and where applicants should be asked to discuss their motivation, experience, skills, interests and aptitudes.

Maryland law protects applicants for employment from discrimination on the basis of race, color, religion, sex, age, national origin, marital status, or physical or mental handicap that does not reasonably preclude the performance of the employment. In addition, certain local jurisdictions have employment discrimination laws that prohibit discrimination based on an individual's political and/or sexual preference. But because employment is not jeopardized if volunteer applicants are not "hired," volunteers are not similarly protected under the law. Nevertheless, it is preferable to approach personnel decisions as if volunteers were protected to save the organization from

potentially damaging allegations, follow valid policies or statutes, avoid potential liability and treat people fairly.

The selection process is the time of least commitment between an organization and a potential volunteer. Because it is often easier to reject unqualified applicants before they become part of the team, many organizations find it helpful to screen rigorously.

Application Form

Because an organization's official employee application form often has been carefully constructed, it usually is a good reference to use in developing a volunteer application form. This form can be used to obtain the data necessary to judge and place the applicant.

A cover letter and/or other inserts can be used to describe the qualifications, time commitments and any special requirements of the position. The written material can work to an organization's advantage by deterring casual applicants who are not prepared to meet the organization's requirements for time of service, training, etc. It is wise to maintain background information about a volunteer for emergency, security and management purposes.

The Interview

The interviewer's first responsibility is to the organization's clients, public and volunteer program; the second is to the applicant. The interviewer should be well informed about the organization's needs and have a clear idea of its

philosophy about accepting volunteers. Some organizations attempt to find a position for all who want to volunteer. Others operate under the rule of thumb that volunteers must give back more than they take in managers' time for training and supervision. In assessing a candidate's qualifications, it often is helpful to introduce the applicant to a colleague or superior to obtain a second opinion to arrive at a consensus as to whether the volunteer should be accepted.

Discriminatory Questions

Employers who make pre-employment inquiries about irrelevant matters in the candidate's background, either in an application form or during the interview process, often create an inference that they relied on the answers to those inquiries to make the hiring decision. Accordingly, interviewers should ask only job-related questions that assist in making a specific hiring and/or placement decision.

In screening applicants for volunteer positions, volunteer managers should similarly avoid asking personal questions that are irrelevant to the job or to the person's ability to fulfill his or her commitment. In general, unless a response to an inquiry provides insight into a valid qualification, it should not be asked. For example, an interviewer should avoid making any inquiries concerning an applicant's age, religion, marital status, medical condition or disability. But if such "sensitive" information is needed to judge an applicant's ability to perform or qualify for the job in question, such as a positive tuberculosis test for working with school children, the interviewer may inquire about it. An interviewer also should avoid asking questions which, if used in making a selection, would have a disparate effect in screening out minorities or members of either sex.

If it becomes important to know certain information about volunteers for other valid purposes, such as age, race or marital status for demograph-

ic reports, the necessary information can be obtained after they have become part of the team.

Reference Checks

Reference checks play an important role in selecting the best candidate for a position. Most organizations check references of applicants before hiring employees. Few organizations, however, require reference checks for volunteer positions. At the very least, references should be checked when the interviewer is uncertain about an applicant's qualifications, reliability or credibility or when the volunteer position involves high levels of responsibility, for example, when working with children or the elderly. When contacting the references listed on an application form, it often is helpful to describe the requirements of the position. In addition to asking the reference about the person, ask about his or her relationship with the applicant.

If a former employer is hesitant to address the questions, it may be a sign of a poor experience with the candidate. But it also may be the result of a company's policy governing telephone inquiries. In this case, it often is helpful to provide a former employer with a signed statement from the applicant that can be obtained when the application form is completed, releasing the former employer from any liability for answering the inquiries. Another strategy is to ask the named reference for the name of another person who knows the candidate. To avoid potential defamation claims, it is important for the person checking references to avoid making negative comments about a candidate.

Rejecting Applicants

Where the qualifications for a position are well defined, an applicant can more easily be rejected for failing to meet minimum qualifications. Applicants should be given forthright reasons explaining why they were not selected. For exam-

ple, an organization should advise an unsuccessful applicant that his or her skills and/or experience do not match those required for the position. There is no legal obligation to accept each and every candidate or to state a reason for rejection. If the reasons are delicate, personnel managers often are more oblique or general with their explanations.

References

Organizations frequently are asked to provide employment references for former or current volunteers.

In response to the rising number of defamation claims based on negative references, many organizations have adopted the policy of only confirming the volunteer's service and the dates of such service. It also is preferable to have all references given by one person who is familiar with the organization's policy. If an organization official feels ethically bound to warn a person requesting a reference about a volunteer's record, it is important to avoid making negative statements about a volunteer that are not directly related to his or her work for the organization and/or that cannot be proven true. It is preferable to give statements that can be supported by fact rather than opinion. For example, an official might say that a former volunteer worked for a short time with children at an agency, but organization officials and the volunteer both decided he or she was better suited for a different type of job. Officials never need to explain or say more than they wish to disclose.

Training and Supervision

All organizations need procedures for training and supervising their volunteers. Good manage-

ment practices make good sense for many reasons. Written job descriptions formalize the scope of volunteers' job responsibilities and thereby clarify expectations for both the supervisors and the volunteers. Training is vital not only for job performance and satisfaction reasons, but also because it establishes a record of the organization's effort to ensure compliance to its standards and goals. Furthermore, by effectively implementing the management principles of communication, effective feedback, vigilant supervision and ongoing evaluation, the organization can be better positioned to minimize its legal exposure for careless or unauthorized acts committed by their volunteers.

Discrimination and Sexual Harassment

As set forth above, federal and state employment discrimination laws prohibit discrimination in any aspect of the employment relationship based upon an individual's race, color, religion, sex, national origin, marital status and physical or mental disability. Even though the laws may technically not apply to volunteers, organizations can avoid discriminating practices by utilizing the tenets of employment discrimination laws when establishing

... organizations can avoid discriminating practices by utilizing the tenets of employment discrimination laws when establishing volunteer program policies.

volunteer program policies.

The prohibitions against sex discrimination in federal, state and local employment laws also bar sexual harassment. Sexual harassment includes not only sexual advances or other verbal or physical conduct where submission to the conduct is made a term or condition of employment or is used as a basis for an employment decision, but also unwelcome verbal or physical conduct of a sexual nature that unreasonably interferes with an employee's work or creates a hostile or abusive working environment.

To reduce their exposure to problems in this area, organizations should adopt a written policy that explicitly defines and prohibits sexual harassment, as well as harassment based on an individual's race, color, religion, national origin, age or handicap. These types of policies generally contain procedures for resolving employee/volunteer complaints. Nonprofit organizations also may want to adopt anti-harassment policies for people to whom the volunteers will provide services.

Confidentiality and Record Keeping

Accurate personnel files are an important management tool for a volunteer program. Although practices fluctuate widely, personnel files typically contain items such as the application form, recommendations and awards, correspondence, work history and documentation on personnel decisions.

Access to Files

Maryland law has no provision that requires volunteers or paid staff to be given access to their personnel files. Relevant documents, however, may need to be produced in a lawsuit. For example, if a facility that supervises children is sued for negligence on the part of a volunteer, its personnel records could be relevant in determining if the facility's officials performed a proper screening to determine if a volunteer posed an unreasonable risk of harm.

Regardless of whether volunteers are permitted to review their files, organizations should be sensitive to the need to handle personnel data in a carefully guarded and systematic manner. To shield themselves from potential liability for unreasonable disclosure of volunteer information, organizations should consider implementing safeguards, such as: not disclosing information on volunteers except to those who have a legitimate need to know the information; not discussing charges against volunteers with more people than absolutely necessary; and making one person

responsible for all disclosures to ensure consistency of treatment.

Paid Staff Members as Volunteers

Many organizations have volunteer opportunities in which their employees would like to participate.

Wage and hour laws require employers to pay non-exempt employees time-and-a-half their regular rate of pay for each hour worked in excess of 40 hours per work week. In addition to the overtime requirements, covered employers must pay employees at not less than the required minimum wage.

In general, a non-exempt employee should not be asked to voluntarily perform the same job as a volunteer that he or she does for pay. However, it will not be considered time worked under the wage and hour laws if an employee voluntarily performs work for civic or charitable purposes on his or her employer's premises outside of his or her normal working hours, provided that the civic or charitable work is not performed at his or her employer's request and is not the same type of service which the individual is employed to perform. All time spent performing civic or charitable work that satisfies these requirements may be recorded as volunteer time, and should not be recorded as work time.

Dismissing Volunteers

The termination of a volunteer's relationship with an organization ordinarily should be viewed as a decision of last resort. In general, the relationship between an organization and a volunteer may be terminated at the will of either party. But organizations should be careful to avoid creating any additional contractual obligations to their volunteers. For example, Maryland courts have ruled that an employer who adopts written personnel policies may create contractual obligations that

employees can enforce. To date, Maryland courts have allowed employers to negate such obligations by including a prominent disclaimer in their personnel policies. Similarly, an organization should avoid adopting policies that in any way limit its right to discharge a volunteer and, at a minimum, should include a prominent disclaimer in any such policies that expressly states that the policies do not create any express or implied contractual rights.

Managers of volunteers often follow a series of progressive disciplinary procedures similar to those used by their organizations for paid employees. In this regard, serious misconduct usually is treated as grounds for immediate discharge. But less serious infractions or performance problems can be handled through verbal counseling and/or progressive discipline, which may include follow-up conferences, written warnings, etc. When a volunteer is not performing up to established standards, it is often beneficial to move him or her to other jobs or positions that better fit his or her skills or interests. Sometimes, however, it becomes apparent a person does not belong with an organization, in any capacity.

When the time comes to sever a relationship between the organization and a volunteer, the manager should be prepared to inform the person that the match between the volunteer and their position is unsatisfactory.

It is important for the volunteer to be notified in a private setting. It often is preferable to have a second supervisor present as a witness. When terminating a volunteer, supervisors should be kind, firm and non-confrontational. The manager should try to remain positive and make suggestions for other places where the person may wish to direct his or her interests. Managers should be sure to obtain any company-owned items such as badges, passes or uniforms. The specific reasons

or events leading to a decision to discharge a volunteer should be disclosed to third parties only if necessary.

chapter five

SPECIAL POPULATIONS, SPECIAL NEEDS SPECIAL RISKS

Volunteers Working with Children

The Maryland Family Law Act requires that certain facilities that supervise or have contact with children must conduct criminal background investigations for all employees working at the facility. Volunteers at such facilities also may be required by the organization to undergo a criminal background investigation before the start of their volunteer service.

Many nonprofit organizations, government agencies and private facilities engage volunteers to work with children. Examples of such agencies include: Hospitals and health-care agencies; recreational facilities and athletic associations; schools, educational and vocational facilities; community service agencies such as Scouts, Big Brothers/Big Sisters, and YWCA; rehabilitation services; and camps, churches and government service agencies.

Youths involved in a designated program usually are placed in the care of that program by someone who has legal custody, such as a parent, caretaker, professional and/or an agent of the youths appointed by a governing body. It is assumed and expected that the agency will make provisions for the safety and welfare of the children. This implies that it is the institution's responsibility to protect the youth from any physical or emotional harm. For the program providing specialized care, it is especially crucial to protect youths who have been abused or neglected.

Many programs accepting youths receive public funds in addition to other forms of revenue. Local, state and federal guidelines, regulations and code standards all affect treatment or services provided to the children. Many programs have regulatory agencies overseeing their operations and licensing them.

Additionally, the rights of the client, volunteer and staff must be taken into consideration. The agency must protect its programs and plan for the rights and responsibilities of all parties, as well as supporting and protecting the fundamental human, civil, constitutional and statutory rights of the children.

Program volunteers often carry professional responsibilities. In some programs, volunteers work as colleagues with employees, sharing the same hours, duties and working conditions.

Volunteer managers must be especially careful interviewing, screening and recruiting volunteers who will be working with children. They should ask open-ended questions about the candidate's previous experiences working with children and check their listed references. If the interviewer has any question about the suitability of a prospective volunteer, he or she should not place the person in the volunteer position.

If an organization requires that volunteers undergo a background investigation, this requirement should be noted on the application.

In the event that a volunteer criminally harms an agency's client, the burden is on the volunteer director to demonstrate that she or he conducted a thorough screening and could not have reasonably known that there was a criminal history of abuse. The main point, however, is to prevent every foreseeable occurrence of child abuse.

Volunteers Working With Disabled or Aged People

Anytime a volunteer is working with a vulnerable population, whether children, elderly or disabled, it is imperative that extra care be taken in screening applicants. If there is any question about the appropriateness of a specific volunteer, that volunteer should not be placed in a volunteer position with that population.

Maryland law does not require criminal background investigations for personnel who work with the disabled or aged.

Volunteers Who are Minors

Historically, young people have been an important volunteer resource to organizations. A good volunteer experience for a youth can be the basis of a lifetime commitment to volunteer service and community involvement. Volunteering provides young people with opportunities to explore career fields, engage in community service and participate in experiential learning.

Minors should not be permitted to volunteer unless they have provided written parental consent for such service. It also would be wise to obtain a medical "release for treatment," executed by the minor's parents or guardians, before the start of the minor's volunteer services.

In many student service programs and youth clubs, the sponsoring school or organization may have already obtained a general consent form. Organizations working through these groups should check first to avoid redundancy.

Some organizations cannot or will not commit adequate resources to have a successful volunteer program. Student and youth volunteer programs can require additional resources for training and supervision. Young people have less experience and often need more structure in their assignments.

Organizations should consider experience, insurance and supervision requirements when placing a young person in a volunteer position.

Minimum Age Issues

An organization should set a minimum age requirement for each volunteer position to protect both the volunteer and the organization. Determining factors include the

requirements of the volunteer job and the level of skill and the maturity necessary to perform the task.

Maryland law places no specific restrictions on the number of hours a person under 18 may volunteer. There are however, statutory restrictions on employing minors. These requirements can be used as guidelines by organizations who work with youth volunteers.

Maryland law prohibits employing any minor under the age of 14 except in very limited circumstances. Between the ages of 14 and 16, a minor's employment is restricted to no more than four hours per day or 23 hours per week when school is in session, or eight hours per day and no more than 40 hours per week when school is not

Anytime a volunteer is working with a vulnerable population, whether they are children, elderly or disabled, it is imperative that extra care be taken in screening applicants.

in session. Under age 16, a person may not be employed before 7 am or after 8 pm, except between Memorial Day and Labor Day, when employment can extend until 9 pm.

Between the ages of 16 and 18, a youth may not spend more than 12 hours in a combination of school hours and work hours per day and must have at least eight consecutive hours of non-work, non-school time in each 24-hour day. Finally, a person under the age of 18 may not be employed for more than five hours continuously without a non-working period of at least one-half hour. Again, while these restrictions apply **only** to the employment of minors, they can be used as guidelines when scheduling volunteers.

Insurance

Unless specifically excluded under the insurance contract, volunteers under 18 years of age should be entitled to the same protection as those afforded to all other volunteers.

Organizations should review their insurance policy to ascertain whether minors are covered in various volunteer positions.

Placement

Both federal and Maryland laws specifically require that no minor under the age of 18 be employed in any "hazardous occupation." Such occupations normally include work in high-risk areas, such as manufacturing plants, operating motor vehicles, power-driven machinery, mining and other work requiring significant physical exertion and/or risk. Also included are occupations involving exposure to radioactive substances as well as the operation, cleaning or adjusting of any power-driven machinery.

Again, these restrictions apply only to the employment of minors. But they can be considered to determine what types of tasks are appro-

priate for minor volunteers. For example, it may be inappropriate, although not illegal, to allow a volunteer to operate, clean or adjust any power-driven machinery or be around radioactive substances. The determination of which tasks are appropriate for youth should be made on a task-by-task basis.

Supervision

Although Maryland law does not specifically require that volunteers under a certain age receive continuous supervision, it is important to provide enough supervision to ensure that minor volunteers' tasks are performed safely and properly. The specific level of supervision may vary, depending on the task that is being performed by the volunteer. No minor volunteer should be permitted to perform a dangerous task without supervision.

Effective interviewing, selection, placement, orientation, training and on-going supervision are vital components for a positive volunteer experience for all age groups. Staff members assigned and committed to working with young people are necessary to have a viable and successful youth service volunteer program.

Court-Ordered Community Service

Introduction

Court ordered community service workers are offenders who, as a sentencing sanction, have been ordered to perform a specified number of unpaid hours of labor for a nonprofit charitable organization, or a government agency.

This sentencing option is permitted provided the offender has not been convicted of a crime of violence as defined by Article 27, Section 643B of the *Annotated Code of Maryland*; the sanction is imposed with the consent of the defendant and if the defendant is not compensated for the work performed.

Court ordered community service is a sentencing sanction for pre-trial offenders, sentenced offenders, juveniles and adults in any one of the following situations:

- o In lieu of court fines, fees, or restitution;
- o In lieu of jail;
- o In lieu of either unsupervised or supervised probation;
- o As a condition of unsupervised probation;
- o As a condition of supervised probation;
- o As a condition of a pre-trial diversion agreement.

Administration

In providing the legal authority for community service as a sentencing sanction, the Maryland legislature sets wide parameters for the establishment of local initiatives. In terms of the administering agency, there are two types of community service programs, those administered by the counties or Baltimore City or subdivision of the respective jurisdiction and those in jurisdictions where locally administered programs have not been implemented. The Department of Juvenile Services and the Division of Parole and Probation operate programs as a service to the courts.

Guidelines

Prior to the imposition of a court order to perform community service, the offender is asked if he or she is willing to perform the required service. The offender is given an explanation of the general kind of activity that community service work entails and the time commitment involved. Experience gained in existing community service programs indicates that the best results generally have been obtained when offenders were allowed one month to complete each 20 hours of work assigned. However, the judge is free to impose the number of hours and completion schedule he or she prefers and may adjust the time frame, depending on the offense and other relevant con-

siderations.

As part of the community service program's intake process, information about the offender is collected. This information usually includes a complete motor vehicle and criminal history, physical and/or mental limitations or disabilities, educational level completed, current employment status, transportation and child care concerns and work schedule availability.

Placement

The program administrator, juvenile counselor, probation agent or drinking driver monitor screens the offender and combines the needs of the placement worksite with the skills, training and experience of the offender. Because the community benefits the most when an offender's special talents and interests are utilized, staff tries to take these attributes into account in arranging work placements. However, many offenders are not highly skilled. Thus, many assignments must be made on a more or less random basis.

No government or nonprofit agency is required to accept court ordered community service workers. Some agencies accept only certain types of offenders depending on program criteria and standards, while others accept no referrals as a matter of policy. Successful operating community service programs have developed a mutually beneficial arrangement - the courts provide a consistent supply of laborers, while local agencies have carved out appropriate service roles.

From the viewpoint of the government or nonprofit organization, community service is essentially a referral system. Regardless of whether the offender personally decides where to serve or is referred by a defense attorney, judge or community service officer, the government or nonprofit organization has the right to decide whether to interview, accept or reject the individual and establishes the parameters of service.

Supervision

The program administrator, juvenile counselor, probation agent or drinking driver monitor is responsible for making the placement, evaluating the placement, and reassigning if necessary. The offender is responsible for completing his or her assigned hours and described duties. The worksite is responsible for providing on-site supervision. Because their service is not wholly voluntary, offenders must understand in no uncertain terms the organization's expectations. Once placed, court ordered community service workers are usually supervised more stringently than volunteers who were recruited through more traditional avenues.

A public or private agency that requests the assignment of a community service worker is responsible for supervising the worker. Volunteer program coordinators must be clear about what constitutes acceptable attendance, behavior and work product. Unsuitable court ordered community service workers should be reported to the community service program administrator. The worker will be removed from the worksite and, after considering all the facts and circumstances, the court may reassign the worker. Worksite staff should understand that there is no obligation to maintain an offender whose performance is not satisfactory and that final responsibility for the offender rests with the court.

When an offender satisfactorily completes the required hours within the time allotted, the worksite supervisor will communicate this information to the community service program administrator according to a pre-arranged method.

Liability

When a government or nonprofit organization utilizes court ordered community service work-

ers, there may be concern about possible injuries, resulting liability, and necessary types of insurance coverage.

Discussions of liability are complex even where straightforward volunteer services are involved. In court ordered community service, the participants involved are realistically consenting but not by definition "volunteering."

Legal liability in court ordered community service is a new field of law. There are very few statutes, case law or published articles on the legal aspects of correctional community service. Therefore, most information is derived from related areas of law where similar principles would be most likely to apply if identical issues are raised.

No government or nonprofit agency is required to accept court order community service workers.

Stipended Volunteers

Stipended volunteers are individuals who receive an hourly, weekly or monthly payment that is unrelated to reimbursement of expenses. The term "stipended volunteer" became popular because the rate of pay often is very low, usually below minimum wage.

While it is not uncommon for a volunteer to receive a free meal, reimbursement for a meal, or a bus token or reimbursement of transportation expenses, these payments are not considered stipends.

There are no statutory requirements in Maryland guiding the policies of stipended volunteer programs.

Many organizations in Maryland work with ACTION, the federal domestic volunteer agency. ACTION administers a few of the federal government's stipended volunteer programs, includ-

ing VISTA (Volunteers in Service to America), Foster Grandparents and Senior Companions. Full and part-time volunteers in these programs are subject to the Domestic Volunteer Service Act. For a discussion of the provisions of the act, see Appendix A.

RESOURCES

Organizations

Governor's Office on Volunteerism
301 West Preston Street
Baltimore, MD 21201
Phone: (410) 225-4496
Fax: (410) 333-7124
1-800-321-8657 (Outside Baltimore)

Provides periodic training seminars on legal and insurance issues for volunteer administrators, publishes resources, and maintains a library on these topics.

Department of Licensing and Regulation
State Insurance Division
501 St. Paul Place
Baltimore, MD 21202
Phone: (410) 333-3288
Fax: (410) 333-6650
1-800-492-6116 (Outside Baltimore)

Regulates insurance business in Maryland and assists consumers with complaints and inquiries concerning life, health, property and casualty insurance problems.

Maryland Commission on Human Relations for Baltimore City
20 East Franklin Street
Baltimore, MD 21202
Phone: (410) 333-1717
Fax: (410) 333-1841

Enforces statutes prohibiting discrimination on the basis of age, color, race, religion, national origin, sex, marital status and physical or mental handicap in employment, housing and public accommodations. Also enforces discrimination in health care institutions.

Maryland Council of Directors of Volunteer Services
1301 York Road, Suite 800
Lutherville, MD 21093

Promotes the growth of volunteerism and educational opportunities for volunteer administrators. Write for information.

National Center for Community Risk Management and Insurance
1828 L Street, NW - Suite 505
Washington, DC 20036
Phone: (202) 785-3891
Fax: (202) 466-5722

Conducts risk management training, provides technical assistance and offers publications on liability and insurance.

People's Pro Bono Action Center
520 West Fayette Street
Baltimore, MD 21201
Phone: (410) 837-9379
Fax: (410) 837-0518

Provides support and technical assistance including information on malpractice insurance and guidance for assistance with programs utilizing volunteer attorneys who provide free civil legal services to the poor. Also serves as a clearinghouse on pro bono programs and opportunities in Maryland.

Secretary of State's Office
State House
Annapolis, MD 21401
Phone: (410) 974-5534
Fax: (410) 974-5190

Advises charitable organizations regarding registration and other laws governing solicitation of contributions from the public.

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APPENDIX A

The following information on the Domestic Volunteer Service Act was extracted from "Vista Handbook: Building a Community One Block at a Time," ACTION, Washington, DC, 1990, pages 27, 45, 47, 63 and 67.

Immunity from Liability and Insurance

Under the Domestic Volunteer Service Act, stipended volunteers are considered Federal employees for purpose of coverage under the Federal Tort Claims Act. Under this act, the Federal Government assumes liability for any damage to property or injury to third persons caused by a volunteer that arises out of his or her official duties as a volunteer and for which the volunteer would be liable under local law.

In case of an accident while driving a privately owned vehicle while in the scope of the volunteer's duties, the volunteer's liability for injuries or property damage sustained by third persons is covered by the Federal Tort Claims Act.

Workers Compensation

Under the Domestic Volunteer Service Act of 1973, a VISTA Volunteer is considered an employee of the Federal Government for purposes of coverage under the Federal Employee Compensation Act (FECA). Administered by the Office of Workers' Compensation Program of the Department of Labor, FECA provides compensation benefits for a volunteer's illness or injury if it is caused or aggravated by the performance of a volunteer assignment. Volunteers are not covered by FECA if the injury or disability results from their own misconduct, intoxication, or willful intent to bring about injury or death to themselves or others.

Unemployment Compensation

Stipended volunteers assigned to local sponsoring organizations are not in an employment relationship with either the Federal Government or the project sponsor for employment compensation purposes and, therefore, are not covered by unemployment compensation.

Civil Rights Laws

The Domestic Volunteer Service Act requires sponsoring organizations to ensure no person shall, on the basis of race, color, national origin, creed, belief, sex, age, handicap or political affiliation, be excluded from participation in, be denied benefits of, or be otherwise subject to discrimination.

Eligibility for Health Benefits

VISTA volunteers are covered by the ACTION Health Benefits Program which includes health benefits, coverage for job-related injuries or illnesses, and staff support.

Coverage begins automatically on the first day of VISTA training and applies to VISTA volunteers only. It does not extend to their spouses or other dependents. Coverage ends on the date of termination as a VISTA volunteer or trainee. Coverage under the health benefits program includes payment for most medical and surgical costs, hospitalization, prescription drugs and certain emergency dental, vision and maternity care.

APPENDIX B

The following information on the Americans with Disabilities Act (ADA) is an excerpt from The National VOLUNTEER Center's January 1992 Legislative Briefing:

ADA gives civil rights protection to individuals with disabilities that are similar to those provided to individuals on the basis of race, sex, national origin and religion. It guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services.

The law requires employers of nonprofit and for-profit organizations with 25 or more employees to make reasonable accommodations to the known physical or mental limitations of a qualified applicant or employee, unless such accommodation would impose an undue hardship on the employer. ADA requires organizations to make reasonable modifications in policies, practices and procedures unless those modifications would fundamentally alter the nature of the services provided by the organization.

It does not, however, impose unlimited requirement on public accommodations. The requirements for changing existing facilities are minimal. A physical barrier need only be removed when its removal is "readily achievable," that is, when it can be accomplished easily, without much difficulty or expense.

The act requires organizations to make reasonable changes to accommodate the needs of people with disabilities. However to do so must not cause "undue financial hardship." "Undue hardship" is defined as "an action requiring significant difficulty or expense." Hardship varies depending on the size, resources and structure of the organization.

The definition of "individual with a disability" is a person who has a physical or mental impairment that substantially limits one or more major activities such as seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself and working.

Reasonable accommodation is any modification or adjustment to a job or work environment that will enable a qualified applicant or employee with a disability to perform essential job functions to assure that a qualified individual has the same rights and privileges in employment as non-disabled employees.

Reasonable accommodation includes making existing facilities more readily accessible such as adding a washroom that is designed to accommodate a wheelchair or constructing a ramp near an entrance that has steps; restructuring a job; lowering the position of light switches; providing qualified readers or interpreters; or modifying examinations or training programs.

NOTES

1. Indeed, one of the Good Samaritan Laws, expressly states that a volunteer is not protected from liability for his negligent operation of a motor vehicle. *See* Md. Cts. & Jud. Proc. Code Ann. §5-313 (Supp. 1991).

2. The primary unintentional tort is negligence, which is discussed in some detail later in this publication.

3. This publication will not discuss intentional criminal acts.

4. *Blaen Avon Coal Co. v. McCullah*, 59 Md. 403 (1883).

5. W. Keeton, W. Prosser, *Handbook of The Law of Torts*, pp. 499-508 (5th ed. 1984).

6. This publication concentrates on civil liability and does not deal with criminal liability. A volunteer may be held responsible for any criminal act he or she commits. It is no defense to criminal prosecution that the defendant was engaged in his or her duties as a volunteer, for which the volunteer may possess civil immunity.

7. This definition is derived from Maryland Civil Pattern Jury Instructions §19.1 (2nd ed. 1984), which is used extensively by the courts of this State to instruct civil juries in the law.

8. *Sanders V. Williams*, 209 Md. 149, 120 A.2d 397 (1956). *See also* *Aleshire v. State, Use of Dearstone*, 225 Md. 355, 170 A.2d 758 (1961); *Moran v. Faberge, Inc.*, 273 Md. 538, 332 A.2d 11 (1975).

9. *City of Baltimore v. Eschbach*, 18 Md. 276 (1862); *East Coast Freight Lines v. Consolidated Gas, Electric Light & Power Co.*, 187 Md. 385, 50 A.2d 246 (1947); *Bauman v. Woodfield*, 244 Md. 207, 223 A.2d 364 (1966); *Cod v. Prince George's County*, 296 Md. 162, 460 A.2d 1038 (1983); *Sanders v. Rowan*, 61 Md. App. 40, 484 A.2d 1023 (1984).

10. *See Kemp v. Armstrong*, 40 Md. App. 542, 392 A.2d 1161 (1978), *cert. denied*, 284 Md. 741 (1970).

11. *Scott v. Watson*, 278 Md. 160, 359 A.2d 548 (1976); *Cramer v. Housing Opportunities Comm'n*, 304 Md. 705, 501 A.2d 35 (1985).

12. *Dalmo Sales, Inc. v. Steinberg*, 43 Md. App. 659, 407 A.2d 339 (1979).

13. *Willner v. Silverman*, 109 Md. 341, 71 A. 962 (1909). *See also* *State v. Katcef*, 159 Md. 271, 150 A. 801 (1930).

14. *Willner v. Silverman*, 109 Md. 341, 71 A. 962 (1909).

15. *Wedeman v. City Chevrolet Co.*, 278 Md. 524, 366 A.2d 7 (1976).

16. *New Summit Associates Ltd. Partnership v. Nistle*, 73 Md. App. 351, 533 A.2d 1350 (1987).

17. This list is by no means intended to be an exhaustive list of the statutes limiting disclosure of government records. *See* Right to Privacy Act, 5 U.S.C. §552a; Access to Public Records Act, Md. State Gov't Code Ann. §10-616 through §10-619; Md. Ann. Code art. 27, §§695, 739.

18. *See, e.g.*, 5 U.S.C. § 552(b)(6); Md. Health — Gen. Code Ann, § 4-301 *et seq.*

19. Freedom of Information Act, 5 U.S.C. §552; Access to Public Records, Md. State Gov't Code Ann. §10-613.

20. *Owens v. Creaser*, 14 Md. App. 593, 288 A.2d 394 (1972) *reversed on other grounds*, 267 Md. 238, 297 A.2d 235 (1972); *Inmi-Etti v. Aluis*, 63 Md. App. 293, 492 A.2d 917 (1985).

21. *American Laundry Machinery Industries v. Horan*, 45 Md. App. 97, 412 A.2d 407 (1980).

22. *Slaysman v. Gerst*, 150 Md. 292, 159 A. 728 (1930).

23. *Brown v. Rogers*, 19 Md. App. 562, 313 A.2d 547 (1974).

24. *See James v. Prince George's County*, 288 Md. 315, 418 A.2d 1173 (1980) (vicarious liability) and *Kahlenberg v. Goldstein*, 290 Md. 477, 431 A.2d 76 (1981) (negligent entrustment).

25. *See Riffey v. Tonder*, 36 Md. App. 633, 375 A.2d 1138 (1977); *Felger v. Nichols*, 35 Md. App. 182, 370 A.2d 141 (1977).

26. *See generally* Md. Cts. & Jud. Proc. Code Ann. §5-309 *et seq.*

27. *Id.*, § 5-312.

28. *Id.*, § 5-314(c).

29. *Id.*, § 5-314(b).

30. *Id.*, §5-312.

31. *Id.*, §5-312(b), (d).

32. *Id.*, §5-313.

33. *Id.*, § 5-313(d).

34. *See* Md. Cts. & Jud. Proc. Code Ann. §§5-309, 5-309.1, 5-309.3, 5-309.4 and 5-310 (Supp. 1991).

35. *Id.*, §5-309. Although this statute applies to any volunteer, those individuals with special training, for example, Red Cross certification or volunteer firemen, are treated slightly differently. All that is required of normal individuals is that they act in a reasonably prudent manner. Individ-

uals with special training are not given a special standard of care, but are simply made immune from simple negligence. The effect is that individuals with special training are held to a higher standard of care that comports to what a reasonable person with that same training would do under the same circumstances.

36. *Id.*, §5-309.1 (Supp. 1991); *see also* § 5-309(a), (b).
37. *Id.* §5-309.1(b). For further discussion of insurance coverage issues, see Chapter 2 of this publication.
38. *Id.*, §5-309.3.
39. *Id.*, §5-309.3(a)(2).
40. *Id.*, § 5-309.3(b).
41. *Id.*, § 5-309.4 (1991).
42. *Id.*, § 5-309.4(b).
43. *Id.*, § 5-309.4(c).
44. *Warner v. Markoe*, 171 Md. 351, 189 A. 260 (1937); *Liscombe v. Potomac Edison Co.*, 303 Md. 619, 495 A.2d 838 (1985).
45. *Warner v. Markoe*, 171 Md. 351, 189 A. 260 (1937); *Bull Steamship Lines v. Fisher*, 196 Md. 519, 77 A.2d 142 (1950); *Hooper v. Mouglin*, 263 Md. 630, 284 A.2d 236 (1971); *Rooney v. Statewide Plumbing & Heating*, 265 Md. 559, 290 A.2d 496 (1972); *Batten v. Michel*, 15 Md. App. 646, 292 A.2d 707 (1972); *Pfaff v. Yacht Basin Co., Inc.*, 58 Md. App. 348, 473 A.2d 479 (1984).
46. *State v. Glen Echo Park Co.*, 137 Md. 529, 113 A. 85 (1921); *Creighton v. Ruark*, 230 Md. 145, 186 A.2d 208 (1962); *Mackenze v. Reesey*, 23 Md. 31, 21 A.2d 84 (1964); *Abraham v. Moler*, 253 Md. 215, 252 A.2d 68 (1969).
47. *Baltimore Ohio R.R. Co. v. Leasure*, 193 Md. 523, 9 A.2d 248 (1949).
48. *Mayor and City Council of Baltimore v. State*, 173 Md. 267, 271, 195 A. 571 (1937).
49. The Maryland Court of Appeals has described the rationale for the principle as follows: "[T]o subject the state to the coercive control of its own agencies would not only be inconsistent with its sovereignty, but would so hamper and impede the orderly exercise of its executive and administrative powers as to prevent the proper and adequate performance of its governmental functions." *Id.*
50. "State personnel are immune from suit in courts of the state and from liability in tort for a tortious act or omission that is within the scope of the public duties of the state personnel and is made without malice or gross negligence, and for which the state or its units have waived immunity under this subtitle, even if damages exceed the limits of that waiver." Md. Cts & Jud. Proc. Code Ann. § 5-399.2(b)(1991).
51. Md. State Gov't Code Ann. §12-101(4).
52. *Id.* §§12-101(3)(ii).
53. *Sawyer v. Humphries*, 322 Md. 247, 587 A.2d 467 (1991).
54. Md. Cts. & Jud. Proc. Code Ann. § 5-399.2(c)(1)(Supp. 1991).
55. *Keys v. Chrysler Credit Corp.*, 303 Md. 397, 408, 494 A.2d 200 (1985).
56. *Vancherie v. Szperly*, 243 Md. 366, 374, 221 A.2d 356 (1966).
57. *Stevenson v. Baltimore Baseball Club Inc.*, 250 Md. 482, 486-87, 243 A.2d 533 (1967).
58. *Bannon v. Baltimore & Ohio R.R. Co.*, 24 Md. 108 (1866).
59. *See* Md. State Gov't Code Ann. §12-304 to 310 (1984).
60. *Id.* §§12-314 to 317.
61. *Id.* §§12-401 to 406.
62. Md. Cts. & Jud. Proc. Code Ann. § 5-346 (Supp. 1991)
63. Md. Transp. Code Ann. 7-702 (1977).
64. Md. Cts. & Jud. Proc. Code Ann. §5-401 (Supp. 1991).
65. *Id.* §5-401(c)(2)(iii).
66. *Id.* §5-401(d).
67. *Id.* §5-402.(d)
68. *Id.* §5-403.
69. Md. Educ. Code Ann. §4-105.1 (1989); *see also* Md. Cts. & Jud. Proc. Code Ann. § 5-353 (Supp. 1991).
70. Md. Educ. Code Ann §4-105.1(3) (1989).
71. *Id.* §6-107.
72. Md. Cts. & Jud. Proc. Code Ann. §5-354 (Supp. 1991).
73. *Id.*, §5-354(a).
74. *Id.* §§5-354(a)(1) and (3).
75. *Perry v. House of Refuge*, 63 Md. 20, 52 Amer. Rep. 495 (1885).
76. *Id.* at 27.
77. *Id.* at 28.
78. *See Eliason v. Funk*, 233 Md. 351, 196 A.2d 887 (1964).
79. *See* the previous discussion in this publication of "Good Samaritan" laws.

NOTES

80. *Howard v. Bishop Byrne Council Home, Inc.*, 249 Md. 233, 238 A.2d 863 (1968).

81. See n.89, *infra*

82. Md. Ann. Code Art. 48A, §480.

83. *Cornelius v. Sinai Hospital*, 219 Md. 116, 148 A.2d 567 (1959).

84. See, e.g., Md. Ann. Code art. 48A, 482B; Md. Educ. Code Ann. §4-105(c) (ii); see also Md. Ann. Code art. 89, §78(b) (statute requiring operators of amusement rides or attractions to have liability insurance; subsection (b) permits a county government to purchase insurance on behalf of a non-profit organization).

85. Md. State Fin. & Proc. Code Ann. §9-105. The availability of insurance pursuant to this fund is limited "to the extent that funds are available in the State budget." *Id.* §9-105(b), (c).

86. Md. Ann. Code art. 48A, 480 (insurer is estopped from asserting charitable immunity defense); Md. State Gov't Code Ann. §12-104(a). See also *Cornelius v. Sinai Hospital*, 219 Md. 116, 148 A.2d 567 (1959) (insurance must provide coverage for basis of suit). In this vein, it should be noted that many insurance policies expressly exclude coverage of punitive damages.

87. *James v. Prince Georges County*, 288 Md. 315, 418 A.2d 1173 (1980).

88. Md. State Gov't Code Ann. § 12-106 requires that before any suit can be maintained against the state, a claim first must be submitted to the state treasurer within 180 days after the injury. Any suit may be filed only within the later of one year from the treasurer's denial of the claim, or three years after the injury.

89. Md. Ann. Code art. 48A, §482C.

90. Md. Educ. Code Ann. §6-107(d)(1). This section does not provide a volunteer with protection from liability for all conduct. For instance, a teacher is held harmless from any claim arising out of the teacher's intervening to stop a fight. *Id.* §7-306. This hold-harmless statute does not extend to volunteers. But, other immunity provisions may apply. See, i.e., Md. Educ. Code Ann. § 4-105.1(a)(4); Md. Cts. & Jud. Proc. Code Ann § 5-3536 (Supp. 1991).

91. Md. Educ. Code Ann. §4-105.

92. Md. Labor & Empl. Code Ann. § 9-202 (1991)

93. See *id.* at §§9-232, 233 and 234.

94. Md. Educ. Code Ann. §6-107(d)(2).

95. Md. Labor & Empl. Code Ann. § 9-202 (1991).

96. See Md. Cts. & Jud. Proc. Code Ann. §§ 5-399.2.

97. See the earlier discussion of Good Samaritan law for details.

98. *Shafer v. Bull*, 233 Md. 68, 194 A.2d 788 (1963).

99. Reprinted from *Guidelines for Board Members of Maryland Charitable Organization*, Attorney General's Office, May 15, 1991.

100. Courts and Judicial Proceedings Article, Maryland Code Annotated Section 5-314(b).

101. Courts and Judicial Proceedings Article, Maryland Code Annotated, Section 5-314(c).

102. Article 41, Maryland Code Annotated, Section 3-201 *et. seq.*

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