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Nonprofit Insights

A Newsletter for Nonprofit Decision Makers

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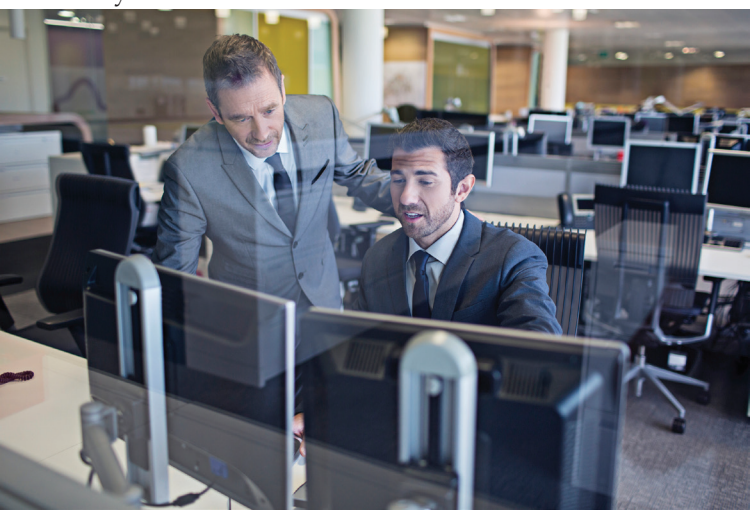
Risk Management for Volunteers

5 Questions You Should Be Asking

Volunteers can be one of a nonprofit's most important assets — and biggest liabilities. They bring their time, talent and enthusiasm to the table. But they also bring with them a high degree of risk.

Volunteers are not paid employees. They don't receive the training and supervision an employee does. They are often thrust into unfamiliar roles and given responsibilities they aren't qualified for. The result is the potential for lawsuits, liability and losses.



As you consider how to best manage the risks to your organization, ask yourself these five questions:

1. How much trouble can volunteers *really* get in to? A lot. And the trouble might not come from where you expect it.

Most organizations assume their biggest risk is that a volunteer will be injured on the job or while travelling in an organization-owned vehicle. According to the Nonprofit Risk Management Center, it's actually the other way around: The biggest exposure comes from accidents or incidents caused *by* volunteers, not injuries to them.

Problem: Some organizations assume they have limited their exposure simply by purchasing a "volunteer accident" insurance policy. This type of policy is important, as volunteers are not covered by workers' compensation insurance in many states. But these policies typically cover only medical expenses incurred by an injured volunteer. In the case of injury to someone else caused by a volunteer, your organization is dangerously exposed.

Action: Speak to your insurance advisor about adding additional coverage to your liability insurance so you are covered for losses caused by the actions of your volunteers.

2. Are we responsible? In a word, yes. Nonprofits can be held responsible for the actions of their volunteers — especially when they did not act to reasonably foresee and address the risks associated with using them. A key legal doctrine behind this is the concept of "agency."

For example, if your nonprofit clearly determines the manner, the means and the schedule for completing volunteer activities, it is understood to have a "level of control" over its volunteers. An agency relationship is then established and your nonprofit could be held responsible for their actions.

Problem: Even "borrowed" volunteers can create liability. These might be corporate employees who volunteer for a work day with your organization. The same goes for volunteers on loan from another nonprofit to help with your special events.

Action: Make sure you know who is providing volunteer services to your organization. Having a volunteer coordinator can help you keep tabs on where volunteers are serving and what they are doing.

3. How bad can the damage be? Pretty bad. Failure to manage volunteer risks can result in substantial damages, including financial costs to the nonprofit. Most important is the threat to your organization's reputation and goodwill — without which you'll be hard-pressed to raise funds and attract support.

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Compliance Matters

Fundraising Events and Fair Market Value

Sorting out the legalities of auc-tions, raffles and gala events can be a challenge. There's plenty of, "Yes … but."

Take a benefit dinner/dance, for example. Essentially, the IRS allows donors to claim a charitable contribution only when nothing of value is received in return. Yes, a donor can deduct the cost of the ticket … but only after the fair market value of the "goods and services" received is accounted for.

So, if tickets to a gala "dining under the stars" event are $100 each, and the fair market value of the meal and entertainment received is $35 per donor, the donor is left with a charitable deduction of $65.

Burger or Filet Mignon?

Fair market value is not based solely on your organization's expenses, but rather on the "value of the benefit received." The key is to determine what a similar evening would cost on the open market if it were not a fundraising event. It could be as simple as having someone on the fundraising committee check prices at a nearby restaurant or caterer and then add in the value of things like parking, entertainment and goodie bags.

Your responsibility: If you provide goods or services in exchange for a donation of more than $75, you'll need to establish the fair market value of those goods or services. Then inform the donor that only the portion of the contribution that exceeds this value is tax deductible. As you plan your event, be sure to check the IRS website (under *Quid Pro Quo Contributions*) to ensure that you are following the most current regulations.

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What About Raffles?

In the eyes of the IRS, the chance to win a prize is something of value. This value negates the tax-deductibility of the donor's "contribution" (the purchase price of the ticket). Make sure that anyone selling raffle tickets on behalf of your organization doesn't promise otherwise.

Your responsibility: That said, a raffle winner is considered to have received taxable income equal to the fair market value of the item won. You'll need to provide a detailed disclosure of the value of the raffle item on the ticket or in a written notice given to the purchaser prior to the sale.

"Who'll Give Me Thirty?"

In general, winning bidders at a charity auction (silent or live) can take a tax deduction on their purchase — but only for the amount over the item's fair market value.

Assume a couple's $3,500 bid wins them a week in a Vail condo donated by your board chair. If the fair market value of the week is actually $3,000, the donors may take a charitable deduction for the difference ($500). If the week in the condo is worth $3,500 or more, no deduction is allowed.

Your responsibility: Provide a good faith estimate of items that will be available for bidding. Then make sure your receipts and thank-you letters state the fair market value of the goods bought.

And don't forget the person who actually donated the product or service to be auctioned off. In general, you'll want to provide an acknowledgement letter with language that affirms that no goods or services were received in exchange for the donation.

Dot Your i's

IRS guidance on the legalities of events, raffles and auctions can be somewhat vague, which can make it nerve-racking for nonprofit fundraisers. For the most part, the IRS and charity regulators simply want to see that you are using a reasonable process to establish value — and then clearly specifying the amount as you promote and execute your fundraisers. ■

Have questions? Allow us to put our extensive tax and accounting experience to work for your organization.

Best Practices

Risk Management Steps You Can Take Today

It is fairly straightforward to manage the risks surrounding your volunteers. In fact, most of what's involved simply reflects sound management practices. Consider these easily implemented steps:

Put policies in place. Develop a risk management policy that clearly establishes proper procedures for volunteers to follow — including appropriate use of the organization's equipment, such as vehicles and computers. Ditto for a volunteer code of conduct. Have the board formally adopt the policy and then create a volunteer handbook outlining everything.

Align skills. As you seek to fill volunteer positions, look to align the right people with the right jobs, taking into consideration each volunteer's experience and talents. For example, you probably wouldn't want to assign a newly licensed teenager to run the van for your after-school program.

Dig deep with background checks. Volunteers who will be working with youth, seniors or other vulnerable populations should receive more vigorous screening, including a criminal background check.

Disclose known risks. Disclose any potential safety concerns associated with volunteer activities. You might go as far as having volunteers sign a formal waiver acknowledgment of the risks.

Partner up. Partner new volunteers with more experienced colleagues to minimize the chance of "rookie mistakes."

Train them. Conduct an orientation specifically for new volunteers. Train them in their specific duties, emphasizing risk management. And make sure they understand the chain of command and who to notify about unsafe conditions or potential hazards.

Inform them. Volunteers should also be made aware of any whistleblower policy (for reporting suspected fraud) or any other policies in place to protect the nonprofit's reputation. Likewise, have them sign confidentiality agreements just as you would do if they were employees or board members.

Pull the plug on risky activities. Consider eliminating any program or activity that is excessively risky. At the very least, temporarily suspend it until a thorough risk assessment can be conducted.

Effectively managing volunteers is really no different than managing paid staff. Treat them with respect, give them the training they need and supervise them appropriately. ■

Managing Volunteer Risks

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Problem: Nonprofits mistakenly assume that volunteer "immunity laws" protect them from liability arising from the actions of their volunteers.

Action: Make sure you fully understand the federal Volunteer Protection Act, which provides broad protections, but also broad exclusions. For example, volunteers are not shielded in cases where they were under the influence of drugs or alcohol.

4. What are the chances of something actually happening? Pretty high. The reality is that a nonprofit cannot escape risk. It's a part of doing business. What you can do is work to reduce that risk.

Problem: Nonprofits often fall prey to the status quo. "We have a good loss record … why should we change if there is no problem?"

Action: Just because something hasn't happened before doesn't mean it won't. Your best step is to make a list of all the activities your organization conducts and the risks they represent. Prioritize these by the likelihood of them occurring, as well as their potential impact. Then develop strategies for managing the different types of risk.

5. Is insurance the same thing as risk management? No. Purchasing insurance is only a very small part of risk management. Insurance is not designed to prevent losses — it only kicks in once a loss has occurred.

Problem: Nonprofits assume that because they have comprehensive general liability (CGL) and directors and officers (D&O) policies that they are fully covered.

Action: Certainly, discuss your insurance needs with an agent or broker. But also take steps to manage your most likely areas of risk — whether it's facilities that are open to the public or volunteers working without appropriate safety equipment.

Ultimately, risk management is a fiduciary responsibility of nonprofit leaders. Take steps now to limit the exposure of your organization and its assets. ■

Our experienced professionals can help guide the risk management process at your nonprofit. Contact our office today to learn how.

Are You Protecting Your "Good Standing"?

While nonprofits are certainly answerable to the IRS, they also have distinct reporting responsibilities at the state level. In fact, most states require nonprofits that are organized as corporations to file annual reports or updates, including:

- Corporate filings,
- Financial reports,
- Reports on fundraising activities, and
- Filings for state sales/use or property tax exemptions.

Piercing the Corporate Veil

Allowing your annual reports or tax obligations to lapse could result in your organization losing its certificate of "good standing" with the state(s) in which you are incorporated. Depending on the state, your nonprofit could then be classified as one of the following: "delinquent," "suspended" or "dissolved."

Substantial restrictions may be imposed on your nonprofit. These include not being permitted to make major changes like amending your articles of incorporation, changing your organization's name, or merging/dissolving the corporation. Just as important, once the "corporate veil" is pierced, your nonprofit may lose the limited liability protection that shields your officers and directors.

File Your Forms

Of course, each state's law is slightly different, so you'll need to work directly with your secretary of state or attorney general's office. Summaries of filing requirements may also be available from your state's association of nonprofits.

In practice, maintaining these annual filings doesn't require much effort. It might be as simple as confirming or updating your organization's mailing address and the names of responsible parties. It might also include filing employment forms with the state Department of Labor if you have employees.

As year-end approaches, take the time to ensure that all state-level filings are up to date. Also check to see if you are "doing business" in any additional jurisdictions that may require registration and reporting. ■