

The seal of the Maryland Department of Aging is a circular emblem. It features a central shield with a red cross on a white background, set against a blue background. The shield is flanked by two figures in historical attire. Above the shield is a crown. The entire emblem is surrounded by a gold border containing the Latin text "VOLUNTATIS TVÆ" at the top and "BONÆ" on the left and "CORONASTI" on the right.

Liability Exposure and Risk Management for Villages

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Disclaimer

- I am not the Attorney General.
- He has not seen this presentation.
- The rest of the Assistant Attorneys General have not seen this presentation to point out what is wrong with it.

Potential Sources of Liability

- Negligence
- Intentional Torts:
 - Assault
 - Battery
 - Conversion
- Statutes barring discrimination

Potential Sources of Liability

- Vicariously liable for volunteer's actions (e.g., auto accident).
- Responsible for officers' and directors' actions (e.g., allegations of discrimination).
- Negligent misrepresentations regarding recommended vendors (e.g., plumber flooded basement).
- Negligent selection, training, or supervision of volunteers (e.g., volunteer stole jewelry).

Potential Sources of Liability

Only limited by the imagination of plaintiff's attorneys.

Potential Plaintiffs

(i.e., people who might sue the Village)

- Members accidentally injured by a well intentioned, but arguably negligent, volunteer or vendor.
- Volunteers injured in the course of their duties.
- Third parties injured by a staff member or volunteer (e.g., volunteer or staff member hits a third party with their car while on Village business).

Potential Plaintiffs

(i.e., people who might sue the Village)

- Members or volunteers who think they have been discriminated against by the Village, its officers or directors, or volunteers because of disability, race, religion, sex, etc., etc., etc.

Potential Plaintiffs

(i.e., people who might sue **your**
volunteers)

- Members accidentally injured by a well intentioned, but arguably negligent, volunteer.
- Volunteers injured in the course of their duties by other volunteers.
- Third parties injured by a volunteer (e.g., volunteer or staff member hits a third party with their car while on Village business).

Good Samaritan Law

Maryland Courts and Judicial Proceedings Article, Section 5-603, only applies during emergencies and only until a licensed or certified medical professional takes over.

So the Good Samaritan Law is not a solution.

Some good news

- Maryland still has a fairly strong charitable immunity doctrine:

If funds of a charity are for charitable purposes, those funds should not be diverted to pay tort damage awards.

Charitable Immunity Doctrine

The doctrine consists of three elements:

1. The predominate activities of the organization must be charitable.
2. Funds must be held in trust, either expressly or by implication, for the charitable purpose.
3. The organization must have no liability insurance covering the complained-of act.

Abramson v. Reiss, 334 Md. 193, 205 (1994).

Some Uncertainty

Is a Village a charity?

Some good news

Maryland Courts and Judicial Proceedings Article, Section 5-406, provides that individuals volunteering, including officers and directors, for charitable organizations [and here 501(c)(3) status will qualify you] are immune from responsibility for ordinary negligence if the organization maintains certain minimum amounts of insurance coverage.

Some more good news

Maryland Courts and Judicial Proceedings Article, Section 5-406, also provides that, if the minimum coverage is maintained, the organization's liability is limited to the extent of the insurance coverage.

What happens if you don't have enough coverage?

Maryland Insurance Article, Section 19-103

An insurance policy issued to cover the liability of a charitable institution for negligence or any other tort shall provide that, for a claim covered by the policy, the insurer may not assert the charitable immunity defense.

Federal Volunteer Protection Act

(42 U.S.C. § 14503)

- A volunteer will not be liable for harm caused by his or her act or omission if the volunteer:
 - acted within the scope of his or her duties;
 - was licensed or authorized for the activity; and
 - is not guilty of willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the person harmed.
- Important exception: A volunteer is not protected from harm caused by driving a car.

Maryland Volunteer Service Act

(Courts and Judicial Proceedings Article, Section 5-407)

- This state law gives additional protections:
 - A volunteer is not liable beyond the limits of any personal insurance he or she may have for the conduct of that volunteer.
 - No protection if volunteer engages in grossly negligent, reckless, willful, wanton, or intentionally tortious misconduct.

Risk Management

- Incorporate
- Get Insurance:
 - Directors' and Officers' (D&O),
 - General Commercial Liability (GCL),
 - Workmen's Compensation ?
- Waivers?

Resources

- The Aging-in-Place Village Concept:
Addressing Liability Concerns

http://www.americanbar.org/content/dam/aba/administrative/law_aging/village_liability_manual_final_long.authcheckdam.pdf

- Village to Village Network

www.vtvnetwork.org

Resources

- Maryland Nonprofits

www.marylandnonprofits.org/Home.aspx

- Nonprofit Risk Management Center

<https://www.nonprofitrisk.org/>

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Thank You