

**Montgomery County Village Gathering**  
**September 2016**  
**Village Gathering: Legal issues**  
**Scribe: Shawn Brenna**

Moderator: Austin Heyman

welcomed everyone to the session (Austin is a Senior Fellow working in the Office of Community Partnerships and is a member of Little Falls Village). Said the three areas of focus will be: 1) Incorporating and getting started, 2) Relationships to State law and liability, and 3) Concerns with volunteers. Then he introduced the speakers.

**Jeffrey Myer**, Assistant Attorney General, Principal Counsel to the Maryland Department of Aging

**Gary Simms**, North Chevy Chase Connections

**DaCosta Mason**, Olney Home for Life

**Gary** worked in associations most of his career (not currently practicing law). The tasks he will describe don't require a lawyer but experience in non-profit world helps. Wife brought him into North Chevy Chase Connections, which is a multigenerational village. Survey found that 1/3 of NCC residents are parents with children at home; another 1/3 have children; and 1/3 are retirees.

How to organize according to your needs and desires? Idea is to detail functions to be carried out by leaders who are legally protected.

Steps:

1. Create a mission statement that describes what the village intends to do in the area it serves
2. Create by-laws (not required in MD, but required to secure tax exempt status). Bylaws set forth governance, define membership and leadership positions, and the method of selecting leaders.

Key Questions Addressed by Bylaws

1. Purpose of the organization
2. How to create the first set of officers/leaders/organizers—Board of Directors
3. How to elect the initial set of directors—how many, how long terms will be. Stagger terms? What to do with resignations—how to replace them.
4. Need two officers—President and Secretary. Most have Vice President and Treasurer too.
5. Specify board meetings—number, etc. State requires at least one per year.
6. Define quorum for voting.
7. Method of communicating notice of meetings.
8. Standing committees? These tend to go on forever—Finance, Communications, (None required, however.)
9. How to set up task forces and ad hoc committees.

## 10. Boilerplate language

- a. Employing people? Non-discrimination policy, hiring process
- b. Conflict of interest policy
- c. Indemnification of board members
- d. Compensation of board members (reimbursement of reasonable expenses)
- e. Maintenance of record
- f. Who can sign for the organization
- g. Fiscal year
- h. How to change by-laws once adopted

There is a great resource which has details about each step: [www.marylandnonprofits.org](http://www.marylandnonprofits.org)

11. Elect officers as outlined in by-laws

12. Provide legal cover for founders

Gary recommends incorporation to protect members and leaders from most legal liability

1. Decide name
2. To see if the name is available, go to [www.dat.state.us.md](http://www.dat.state.us.md)
3. Download form
4. Pay \$170 fee

Once incorporated:

1. Obtain Employee Identification Number ([www.irs.gov](http://www.irs.gov)) to file annual tax form
2. Apply at same site for preliminary 501©3 (non-profit) status
  - a. Form 1023EZ usually works for villages
  - b. \$400 fee for the filing; can pay with credit card or mail check
  - c. Can get it in as few as ten days
  - d. Look at instructions on the form carefully, especially the categories-- #522 is "Neighborhood Association"
  - e. Ratify those who participate in filings on behalf of the organization
3. 990EZ Federal Tax Return
  - a. It's quick when you don't have a lot of money
  - b. File COR92 in Maryland which allows you to solicit charitable contributions
  - c. Tax exempt from paying sales tax
4. Annual Form: Personal Property
  - a. If hiring staff as employees or contractors, remember tax\*es-Employment, and Workman's Comp
5. Five years later, IRS will check back. File 8734 gives permanent tax exempt status.

## Jeff Myers

Potential sources of liability (can be sued): "Only limited by the imagination of the plaintiff"

See slides #3-5 for examples such as negligence/assault/battery; discrimination; auto accident; negligent misrepresentation regarding recommended vendors; and negligent screening, training, or supervision of volunteers.

Volunteers and members could sue. Volunteers and staff can be sued and will want protection. See slides 6-8 for more examples.

Solutions?

**Good Samaritan Law in Maryland only protects people intervening in a medical emergency.** It does not protect volunteers providing transportation to medical appointments.

Refer to ABA's document on liability issues for villages

Maryland's Charitable Immunity Doctrine (slide 11):

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

1. Must be charitable organization
2. Funds must be held in trust (village with membership fees may not count)

Some good news (slides 13-17)

MD Courts and Judicial Proceedings Article, Section 5-406 provides that individuals volunteering for charitable orgs are immune from responsibility for ordinary negligence if the organization maintains certain minimum amounts of insurance coverage.

It also provides that, if minimum coverage is maintained, the organization's liability is limited to the extent of the insurance coverage.

If you don't have enough coverage (slide 15): 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** protects volunteers from liability under certain circumstances (slide 16), but doesn't cover harm caused by driving a car)

**Maryland Volunteer Protection Act (slide 17) gives additional protections for** volunteers if they are doing what they are supposed to be doing:

"A volunteer is not liable beyond the limits of any personal insurance he or she may have for the conduct of that volunteer."

### **Risk Management**

1. Incorporate
2. Get insurance
  - a. Directors and Officers (D&O)
  - b. General Commercial Liability (GCL)

- c. Workman's Compensation (might be a good idea in case volunteers get hurt, but it is not required)

3. See Village to Village website and the Nonprofit Risk Management Center  
Jeff.Myers@Maryland.gov

## **DaCosta Mason**

Villages can be liable for harm even when they have good intentions.

Tort Law: involves injury or damage to person or property, whether intentional or due to neglect.

Possible sources of liability:

Volunteers: Villages must choose and train appropriate people to provide services. Vet through criminal background checks and driving records. Also, be sure drivers have updated auto insurance and a valid drivers license

Carelessness makes Villages vulnerable. Laws that are designed to protect the Village may not apply when the Village is negligent.

Vendors: Do you have a basis for your endorsement of a particular vendor? The Village should do research (i.e. Better Business Bureau, Consumer Checkbook, etc.) before making specific endorsement of vendor. A word of mouth endorsement may not be sufficient to avoid liability. If the Village provides a list of vendors, the members should be advised by the Village that the Village is not providing a specific endorsement and the members have to select and be responsible for their own research..

Training: Villages should provide training to volunteers that will help them carry out their responsibilities. Villages can't send volunteers to perform functions like lifting members in and out of vehicles or, dealing with behavioral health issues on home visits without appropriate additional training.

Waivers of Liability: Villages can seek to avoid liability by developing documents that waive Village liability for torts and have them signed by members and/or volunteers. This can help protect the Village but is not foolproof.

## **Q & A**

Cost of Liability Insurance? Varies depending on coverage and company. May be able to get information or recommendation from Village Coordinator or other Villages.

Maryland statute sets minimums—some services require more protection than others.

It takes money to defend your organization. Defense cost insurance exists, but if you lose it won't cover the payments due.

Homeowner's insurance policies may provide some protection to you as a volunteer.

**Auto Insurance:** Keep up-to-date information on volunteers' auto policies expiration dates.