

Economic Security Corp of SW Area

Risk Assessment Report

Introduction to Risk Management

This report contains recommendations about the discipline of nonprofit risk management as well as the process of identifying and managing the risks facing your organization. The suggestions in this report follow the subtopic headings for the module: the risk management function, workplace safety, and governance risks. If your organization is developing a risk management program for the first time, this report will help you get started. If you already have a risk management program, consider comparing the suggestions in this report with your current practices to identify where you can strengthen your program.

Very few nonprofits can afford the cost of a full-time, professional risk manager. Yet a risk management program is within the reach of every organization. It's never too late to start a concerted effort to protect and preserve your vital resources. By taking the time to identify the risks facing your organization and taking steps to make your operations safer, you'll save money, heartache, turmoil and the disruption of avoidable accidents and lawsuits.

Staffing the Risk Management Function

You indicated that your organization does not employ a professional Risk Manager. You're not alone! The vast majority of nonprofits do not have the resources to employ a risk manager. There are many other ways that your nonprofit can ensure leadership for your risk management program.

You indicated that responsibility for risk management activities has not been assigned to an individual, department or unit within your organization. Making this assignment is extremely important. Every nonprofit needs a "point person" on risk management and safety issues. For most organizations, this designee will wear several hats.

Risk Management Committees

You indicated that your nonprofit does not currently have a Risk Management Committee. The deployment of a risk management committee is an effective, affordable way to begin managing risk in a nonprofit organization. Alternatively in organizations where the individual responsible for risk management wears many hats and is overwhelmed, the committee may shoulder an important share of the burden. The use of a risk management committee also ensures a broader perspective. Typical risk management committees have staff and volunteer representatives. In addition, an organization's outside counsel, CPA, and insurance agent may participate as advisors to or members of the risk management committee. The responsibilities of a risk management committee can be quite diverse, but might include:

- Establishing the goals of a risk management program to be adopted by the board of directors;
- Identifying the major risks facing the organization;
- Developing risk reduction and loss control strategies for the organization's most troubling risks;
- Recommending a risk financing strategy (or strategies) to the board of directors;
- Selecting the organization's insurance advisor (agent, broker or consultant);
- Coordinating the purchase of various insurance coverages for the organization;
- Reporting to the board on a periodic basis the organization's priority risks and strategies for

managing those risks. The level of involvement of the risk management committee varies from one organization to the next. These variations may be due to:

- The availability of a professional staff person who plays a major role in risk management activities. When an organization has not assigned the risk management function to a lead staff member, the committee's advisory or policy role may be dwarfed by its operational responsibilities.
- The experience and background of committee members.
- The nature and magnitude of the risks facing the organization.

Risk Management Policy

You indicated that you have a Risk Management Policy Statement or other statement that addresses your commitment to safety. Congratulations on taking the first step to ensuring that your commitment to safety is recognized by all of the personnel who work to make that commitment a reality.

Board Involvement

You indicated that risk management is an issue that garners the attention and interest of your board of directors. This is often true in organizations that have been sued or in nonprofits that serve vulnerable populations. In the latter type of organization the board may be sensitive to the special risks and burdens of the organization's operations.

Almost without exception, the board of directors of a nonprofit plays an important role in risk management. The board is, after all, ultimately responsible for the health and well-being of the organization's assets, including its human resources, financial assets, property, and reputation. Getting the board's attention and interest in risk management is an important step in ensuring that the resources required to manage risk will be available.

Insurance

There are more than 1.3 million nonprofits in the United States, including an estimated 800,000 organizations operating under Section 501 (c)(3) of the Internal Revenue Code. Many nonprofits are very small and do not have a risk financing strategy in place. For those organizations that have considered how they will pay for losses or harm, insurance is the most popular risk financing tool.

The types of coverages appropriate for a specific nonprofit depend on the exposures facing that organization. It is impossible to say, therefore, that all nonprofits should carry certain coverages. An organization should decide what coverages to buy after undertaking a careful review of its exposures. The staff of a nonprofit, assisted by volunteers, an agent or broker with nonprofit experience, or a consultant, can conduct this review, sometimes called a "risk assessment" or "exposure analysis."

Insurance Advisors

You indicated that your organization has an ongoing relationship with an insurance professional. An insurance agent, broker, or consultant can provide valuable services to a nonprofit. Your advisor can help you negotiate favorable terms with insurance providers, keep the staff informed about new insurance products and conditions, and monitor relevant changes in the insurance marketplace. Another important service is to assist your agency with the handling of any claims. Your insurance professional can also participate in risk management activities by serving on or advising your risk management committee and acting as a sounding board during the discussion about financing insurable risks.

Professional Advisors Who Serve on the Board

You indicated that your insurance advisor *does not serve* on your board of directors. This is a good management practice. Nonprofit staff and volunteers often wear many hats so it is not uncommon for an organization's insurance agent to serve concurrently as a member of the board of directors. This structure often leads to reluctance on the part of staff to voice complaints about the advisor. Occasionally, the board member/insurance agent does not have experience insuring nonprofit organizations thereby creating a poor match between an organization's insurable risks and its insurance program.

The best course is to rely on outside professionals, including an insurance advisor, who do not also serve on your board of directors.

Long-Term Relationship with an Insurance Advisor

You indicated that your nonprofit has used the same insurance advisor for 6-15 years. This may be because you have been satisfied with the service you are receiving from your advisor, you are uncertain about the process for changing advisors, or there are other considerations or pressures at work. While an advisor's expertise and knowledge concerning your operations is arguably cumulative, it makes good sense to have your insurance professional occasionally put your insurance program "out to bid." This means that the advisor asks a number of competing companies (usually 2 or 3) to prepare quotations for your insurance program. If you are unsure about your insurance professional you can also consider various candidates for the advisor position and have the two or three candidates present quotations for your insurance program. Either approach enables an organization to determine whether its insurance program and advisors are competent, complete and priced competitively. However, recognize that insurance agents and brokers work on a commission basis and that it is not cost effective for them to compete for the insurance program of a small nonprofit organization. Therefore, smaller organizations may have trouble finding an insurance agent or broker to handle their account.

Confidence in an Insurance Advisor

You indicated that you have a high level of confidence in the expertise of your insurance advisor. A knowledgeable insurance agent, broker or consultant can be an invaluable asset. Always strive for an open, honest relationship with this key advisor and tell him or her immediately if at any time you are not fully satisfied with the service and advice you are receiving. Having a high level of confidence in an insurance advisor, however, does not negate the need for someone within your organization to understand the insurance policies you have to protect your organization. Never rely on the insurance company's or advisor's marketing materials or verbal promises with respect to key aspects of coverage. If there are any parts of any policy that you do not understand, request clarification until you are comfortable with the policy language and understand the protection it affords.

Despite a high level of confidence in their insurance agent or broker, some nonprofits have concern about the quality of their insurance program. By the nature of the industry, most agents and brokers work on a commission basis with the insurance companies they work with. Some insurance buyers are concerned that the agent or broker is more focused on the sales than the insurance protection the organization really needs. One option is to contract with an insurance consultant with nonprofit expertise to review your insurance program and provide an independent and objective assessment.

Understanding Insurance Policy Language

You indicated that you have a high level of confidence in your ability to read and understand insurance policy language. Your organization is well served by your willingness and ability to read and understand

your insurance policies. However, even insurance professionals can be uncertain about one or more policy provisions. If you do not understand fully certain sections of the policy, ask your insurance advisor with the expectation of a clear explanation or a commitment to research the answer.

As a reminder, the major components of an insurance policy are described below:

- *Definitions* - explain the special meaning within an insurance context of many common words. It is important to read and make certain you understand the policy definitions before proceeding to other key sections.
- *Declarations* - The "dec page" shows the insured's name and address, the policy period, amount of deductibles (if any), the pending or prior acts date (or retroactive date), and other information specific to that policy.
- *Insuring Agreements* - specify what the insurance company has agreed to pay for or to provide in exchange for the premium. These are usually found in the first section of the policy and are clearly identified. However, there may be other insuring agreements buried in the policy; these are often called extensions of coverages. An insurance policy begins with stating what it covers and then proceeds to restrict, limit, and exclude certain coverages or events. Therefore, you cannot just read the Insuring Agreement to understand the coverage. For example, under a D & O policy, the insuring agreement might state that "the company will pay on behalf of the **insured** all **loss** that the insured becomes legally obligated to pay due to a **claim** first made against the insured during the policy period because of a **wrongful act**." As you read the policy, you must research the definitions of insured, loss, claim, policy period, and wrongful act in order to determine if the policy will cover the incident.
- *Exclusions* - are the policy provisions that eliminate coverage for specified exposures or actions. Exclusions clarify the coverages granted by the policy. Most policies have a section entitled, "Exclusions"; however, exclusionary language appears in other parts of the policy. Also, sometimes an exclusion contains a broadening provision such as a statement indicating that the contracts exclusion does not apply to an employment practices claim.
- *Conditions* - qualify the promises made by the insurance company. The company imposes certain requirements or conditions on the insured, such as paying the premium or providing written notice of claim as soon as practicable to a specified address. Failure to meet your obligations can void the policy or otherwise restrict coverage.
- *Endorsements* - are policy forms that modify the main coverage form. Endorsements can add coverage (such as adding Employment Practices Liability coverage to a D & O policy) or they can modify the coverage by revising a definition (providing coverage for nonmonetary claims). Lastly, an endorsement can restrict or exclude coverage such as an endorsement that excludes claims from pending and prior litigation.

An insurance policy is a complex contract that may contain conflicting and confusing provisions. You must read the entire contract to fully understand the coverages fully, the insurance company's responsibilities, and your obligations. Some insurance advisors recommend that the insured review the endorsements first to identify those sections of the main policy form altered by each endorsement. This makes the process of reading the main form easier by alerting the reader in advance to sections deleted or altered via endorsement.

Workplace Accidents and Injuries

You indicated that your employees and volunteers are not vulnerable to physical harm due to the nature of your organization's activities. Although your staff may not work with volatile clients or be exposed to hazardous operations, workplace injuries can occur anywhere. Under state workers' compensation laws and federal and state occupational health and safety legislation, you have an obligation to provide your

employees with a safe work environment. Although the various work safety laws may not apply to volunteers, your nonprofit will still want to provide them with a safe environment. Employees and volunteers can be exposed to blood-borne pathogens even if you do not provide any medical or health services, since someone can get a cut while participating in the most mundane of activities. The same is true for hazardous materials, since household cleaning products, copier toner and even correction fluid can be pollutants. Other dangers include back injuries from improper lifting, a "slip and fall" on a wet floor or a frayed carpet, and cumulative or repetitive motion injuries from extensive computer work. Although you may not consider your activities dangerous, the workplace and service sites are full of hidden and unrecognized dangers. Similar to your risks, you need to identify the workplace hazards and take the appropriate steps to manage these risks.

The Occupational Safety and Health Act, enacted in 1970, requires that employers provide and maintain a safe and healthy working environment. The Occupational Safety and Health Administration (OSHA) administers the law. OSHA regulations set health and safety standards, require record keeping of work-related accidents and injuries, and require identification, staff training, and correction of unsafe conditions. However, nonprofits need to recognize that safety issues are broader than OSHA regulations and traditional concerns of "slip and fall" liability. Safety concerns encompass issues ranging from air quality and ergonomics to violence at the workplace.

OSHA requires employers to carefully track all workplace injuries, accidents, and work-related illnesses. Nonprofits with fewer than ten (10) employees are technically spared OSHA's record keeping requirements, but *all nonprofits should carefully log workplace injuries and accidents in order to comply with workers' compensation requirements as well as to meet OSHA standards.* OSHA requires that employers give employees, upon request, access to their own medical health records. Should there ever be an incident where a death occurs at the workplace, OSHA must be notified within eight hours. Workplace accidents resulting in the hospitalization of three or more employees are also "reportable incidents."

Workplace Violence

According to the U.S. Centers for Disease Control (CDC), homicide is the second leading cause of death on the job. According to the National Institute for Occupational Safety and Health (NIOSH), in 1997, each week an average of 20 people were murdered while at work and 18,000 people are assaulted while on the job.

Preventing workplace violence and creating safe and secure business environments is one of the most important issues facing employers. Every employer - including nonprofits - should be aware of the trends in workplace violence and opportunities to minimize and manage this risk.

Although there are no statutes that specifically address combating workplace violence, federal and state governments have indicated a growing interest in this difficult problem.

In March 1996, OSHA published guidelines concerning violence inflicted by patients on healthcare and social service employees. While these guidelines are advisory in nature, they are potentially useful for all nonprofit employers as they offer ideas for preventing workplace violence. The guidelines recommend that organizations adopt a four-part violence reduction program:

- management commitment and employee involvement,
- work site analysis,
- hazard prevention and control, and
- safety and health training.

As is the case with other policies, nonprofits should be very careful about assuming an obligation of care that would not otherwise be required. In addition, organizations that adopt workplace violence policies should be fully committed and able to live up to the policies. The failure to comply with your own policy could be a powerful weapon used against you in litigation.

Several states have adopted their own guidelines and training materials. For example, the California Department of Industrial Relations, Division of Occupational Safety and Health (DOSH) requires that at-risk employers adopt a strategy to prevent workplace violence. This requirement is part of the state workplace security guidelines revised in 1995.

Violence Prevention/Response Tips for Nonprofit Employers

- Review your hiring process - don't forget the importance of verifying information and references to the extent possible.
- Promote a violence-free workplace - establish and communicate to all staff your zero tolerance for violence policy, which should include verbal or physical threats of violence. Make sure staff know that violators are subject to discipline leading up to termination.
- Take all threats of violence seriously and conduct a thorough investigation of every allegation.
- Implement a staff grievance procedure.
- Handle lay-offs and firings with great care, allow employees to leave the organization with dignity.
- Train your supervisors to recognize troubling behavior, personality changes, and signs of mental illness.
- Respond to violence immediately by alerting proper authorities.
- Provide counseling by trained therapists following a violent incident.

Hazardous Chemicals

You indicated that your personnel may be exposed to hazardous chemicals or materials. OSHA's standards require straightforward safety procedures which include:

- having a written "hazard communication program,"
- labeling all hazardous chemicals on site,
- training staff about the presence of hazardous chemicals and avoiding exposure,
- the use of universal precautions, and
- emergency first-aid procedures in case of exposure to hazardous chemicals.

Substances such as cleaning supplies, chlorine, copier machine toner and solvents must be labeled. The practical impact of OSHA's Hazard Communications Standard is that all nonprofits should:

- include training on hazardous chemicals in accordance with a written program during orientation of new employees and volunteers, and
- review emergency procedures and hazardous chemical labeling with all staff on an annual basis.

Nonprofits that engage in activities involving construction should be aware that OSHA has a specific standard for construction activities. The full text of OSHA's hazard communication standards, along with interpretive rulings, is available at the OSHA web site: <http://www.OSHA.gov.%20> The applicable standards are carefully described in OSHA's "Hazard Communication" standard, which is found at Federal Register Section 1910.1310, subpart (f).

Safety Inspections

You indicated that your organization conducts periodic safety inspections of your various locations. This is an excellent risk management technique to prevent losses. Regular inspections are a very basic but critical step to protect your staff and visitors from harm and maintain a safe workplace. On a regular basis someone within your organization should conduct a physical inspection of each of your locations and document the findings. Problems should be corrected as soon as possible. Depending upon the size of your agency many insurance companies will conduct inspections of your premises for you. Check with your insurance advisor to see if you qualify for any of these services.

Governance

Board Awareness

You indicated that the members of your board understand and are able to convey your Community Action Agency's mission and purpose. A board that is fluent with regard to a nonprofit's mission and purpose is less likely to take actions that will invite litigation, or otherwise act in a manner that puts the nonprofit's vital assets at risk. Remember that keeping your board up to date on programmatic developments is key to helping them discharge their legal duties of care and obedience.

Orienting the Board

Helping your board fulfill its legal duties is not an easy task. The members of your board must be committed to being effective members. Every nonprofit can enhance the board's ability to act appropriately by providing directors with information and guidance. Producing a policy manual or board operations guide is one way to ensure that every board member receives basic documents and information on the organization's history, structure, and activities. Another valuable tool is a board orientation program.

You indicated that you do not provide an annual training or orientation session for your board of directors. Board orientations are one way to help a board meet its legal *duty of care*. Most nonprofits are dynamic organizations that regularly face new challenges and opportunities. By providing a regular forum in which to keep the board abreast of these changes, an organization can systematically provide the information the board needs to thoughtfully govern the organization. We recommend that you consider offering an orientation for new board members or an annual presentation on the organization to the full board.

Providing Timely Materials

You indicated that background materials are distributed to your board well in advance of board meetings. This is an excellent practice. A common complaint among nonprofit CEOs is the time involved in preparing background materials for board meetings. Some argue that the time spent preparing for board meetings leaves little time to accomplish the organization's mission. Yet distributing thorough and comprehensive materials well in advance of board meetings is essential to managing an organization's governance risks. A board cannot meet its legal *duty of care* unless it has the opportunity to review information on programmatic activities, the nonprofit's financial position, and current challenges and opportunities in time to formulate thoughtful questions. This review enables members to actively participate in board meetings.

Evaluation of the CEO

You indicated that the board monitors and evaluates the performance of the CEO on a regular basis. Evaluating the chief executive's performance is an often neglected, but essential responsibility of a nonprofit board. Governance experts advise that the periodic and fair evaluation of a CEO can improve the overall effectiveness of a nonprofit. Congratulations on your diligence in undertaking this almost always difficult but critically important and valuable task.

Oversight of Employment Practices

You indicated that members of your board are well versed in the organization's employment policies and procedures. This is an excellent practice. Every nonprofit with paid staff is vulnerable to employment-related claims and challenges. As was true with financial management and fund-raising, the nonprofit board plays a critical role in establishing appropriate employment policies and ensuring that the organization follows its policies.

The board should be informed and educated on these issues to ensure that it fulfills its legal responsibilities. This does not mean that the board should review or question every employment action. In fact, the best practice is for the executive director to handle all employment issues according to policies established by the board. The board only participates in the hiring, supervision, and firing of the executive director. Board members should, however, raise questions and seek clarification whenever they have reason to believe that the organization's employment policies have not been followed.

Board Self-Assessment

You indicated that your board of directors does not periodically assess its own performance. Self-assessment of performance is a potentially valuable activity for a nonprofit board. By conducting a periodic self-assessment, a nonprofit board can determine how well it is carrying out its responsibilities. A self-assessment also provides an opportunity to identify areas where the board can improve its performance. A self-assessment can be conducted prior to a board meeting, with the results shared at the meeting, or be conducted as an exercise during a board meeting. There is no single method for undertaking a board self-assessment. Incorporate self-assessment in a way that suits the culture and needs of your club or council.

The following sample board assessment instrument is provided for your use. We encourage your to edit and adapt this to best meet the needs of your club or council. Add statements that are especially relevant to the work and expectations of your board.

Sample Board Assessment

Thank you for taking time to complete this survey, which will help us govern ourselves more effectively! If you choose to, please identify yourself, below.

Please circle the appropriate response: 1 = I do not agree; 2 = Neutral; 3 = I agree

The customary board meeting time is convenient	1	2	3
Board materials reach me in time to prepare	1	2	3
The length of board meetings is appropriate	1	2	3
The number/frequency of meetings is appropriate	1	2	3
I feel comfortable asking questions during meetings	1	2	3
Board meetings are welcoming and inclusive	1	2	3
The board is sufficiently diverse	1	2	3
Board members are prepared for meetings	1	2	3
The leadership structure is effective	1	2	3
I feel fully engaged as a board member	1	2	3
My talents/wisdom are put to good use	1	2	3
The board exercises appropriate fiscal oversight	1	2	3
My ideas for strengthening the board are:	_____		

Name (optional) _____

Committee Charters

You indicated that you do not have charters in place for all of your board committees. A committee charter is a document that outlines the roles and responsibilities of a committee. Some charters also note qualifications for committee members.

Committee responsibilities differ based on the needs, culture and circumstances of a particular organization. Committees meet more or less frequently, are broadly or narrowly focused, and may take on a wide range of duties. In very small agencies committees may be responsible for projects that professional staff manage in larger agencies. Your volunteers want to succeed. A charter helps the enthusiastic members of a committee understand the parameters of their work. And it also helps the entire board--including those who aren't serving on a particular committee--see how the committee fits into the governance mosaic of the agency.

Review the SAMPLE charter below to determine if a tool like this could be helpful to your board. Keep in mind that this is a single charter. Your committee charters could be more or less detailed, depending on your needs.

If you choose to develop charters, task the committees with drafting their own charters. Draft versions should be presented to the full board for discussion and approval.

SAMPLE Finance Committee Charter

The Board of Directors of [ABC NONPROFIT] has established a Finance Committee in accordance with the guidelines described below.

The Finance Committee shall meet at least four times annually, but more often if desired or necessary, in order to discharge its responsibilities. All meetings may be held by telephone conference call. Unless otherwise authorized by the Board, the Finance Committee shall have no power to act on behalf of the Board, but shall present its recommendations to the Board for action.

The members of the Finance Committee shall be persons serving on the board who have no existing financial, family or other personal ties to management of the organization. No staff members of the organization will be eligible to serve on the Finance Committee.

The Treasurer of [ABC NONPROFIT] shall serve as Chair of the Finance Committee.

Member qualifications include:

1. A clear understanding of the mission, goals, and strategies of the organization and familiarity with its core programs and services.
2. Financial literacy/expertise (at a minimum, the ability to read and understand nonprofit financial statements).
3. Courage to ask probing questions and to follow up for answers.
4. Ability to see the big picture.
5. A commitment to safeguard the organization's reputation and assets.
6. A commitment to respect, support and collaborate with the staff (employees and volunteers) of [ABC NONPROFIT].
7. A commitment that the organization will report fairly, accurately, and regularly on its activities

and financial condition.

8. Willingness to do the right thing, not just do things right.

The responsibilities of the Finance Committee include:

- Monitoring financial transactions.
- Providing guidance to staff about what can be done with regard to financial matters.
- Overseeing the preparation of the annual budget and monthly financial statements.
- Overseeing the administration, collection, and disbursement of the financial resources of [ABC NONPROFIT].
- Advising the board with respect to any significant financial decisions.

Members of the Finance Committee shall be appointed by the Chair of the Board and serve for one year.

Eligibility for Re-Election

You indicated that service and participation records of incumbent board members are not reviewed and considered before incumbents are nominated for re-election. The governance responsibility of CAA board members is too important to neglect the need to hold board members accountable. Although it may feel awkward at first, once you have institutionalized the process of reviewing the service and participation records of members before they are nominated for re-election, you will send an important message that board service is indeed a privilege. And in all likelihood, individuals who are unable to live up to their attendance and service requirements will step down, freeing up space for new members who *can* commit. No member should be re-elected if an objective review determines that they have not been able to live up to the requirements for board members of your Community Action Agency. If requirements and expectations are unclear, resolve to rectify this by developing a position description for the board that specifies roles, expectations and minimum participation requirements.

Board Size Matters

You indicated that your CAA board has not recently considered the subject of board size. There are varying points of view about the "optimal" size for a nonprofit board. Like the issue of term limits, there is no single correct answer to the question: "What size is best?" And over time, the needs of your CAA may differ. During a period of growth necessitating a larger commitment to fundraising and outreach it may be optimal to increase the size of the board. Consider adding a discussion of "board size" to an upcoming meeting of your Nominating Committee or Board Development Committee. Resources on this topic are available from CAPLAW and also from www.boardsource.org. After studying the matter, the appropriate committee can bring its findings and recommendations to the full board for further discussion and possible action.

Financial Management

This report contains recommendations about internal controls. The suggestions in this report follow the subtopic headings for the module: Employment Issues, Cash, Payroll and Employment-Related Expenses, Program Services, and Investments.

Every nonprofit that has at least one checking account should establish internal controls to protect its financial assets. The controls that will be appropriate in a large organization, however, may not translate to a small nonprofit. Every organization must balance security and resources in deciding which controls are essential.

This report offers a number of suggestions for reviewing and updating your existing control structure. The financial advisors to your nonprofit, such as your Director of Finance or Controller, an outside CPA advisor, or your audit firm should be consulted as you work to strengthen your internal controls.

Intact, Daily Bank Deposits

You indicated that receipts are not deposited intact on a daily basis. Just as you wouldn't keep large quantities of cash under your mattress, the safest place for your organization's cash and securities is in the bank. Funds that are on your premises or in the possession of an employee or other individual, are subject to theft, loss, or accidental destruction. Also, if you have an interest bearing account, undeposited funds represent lost revenues that your organization could otherwise be earning.

Sometimes it may be impractical to make bank deposits every business day. In this case, consider implementing a policy of never having more than a certain amount of funds awaiting deposit in your office at any given time. Funds awaiting deposit should always be kept under lock and key. Use of a bank lock box allowing payments to be mailed directly to the bank can also be helpful in minimizing the amount of cash stored on your premises.

Bank Lock Box Services

You indicated that your organization does not use a bank lock box. A lock box is like a cross between a post office box and direct deposit. When you rent lock box services from your bank, the bank provides you with a unique box number to which your organization can have payments sent. Once the payment arrives, the bank deposits the funds in your account and sends the documentation (invoices, correspondence, etc.) along to you. A lock box offers the following advantages:

- Funds are deposited to your account immediately without delay and begin earning interest.
- Reduces the risk of theft or mishandling of funds.
- Saves staff time in processing checks onsite and preparing and making deposits

The fees banks charge for lock box service can vary widely. Contact two or three institutions before making your choice.

Disbursements by Check Only

You indicated that disbursements are not always made by check. Making all significant disbursements by check:

- ensures that there is a written record of every transaction,

- increases the likelihood that the proper purchasing procedures have been followed, and
- encourages the practice of recording each disbursement properly within the bookkeeping system.

If it is necessary to make non-check disbursements from time to time, you can reduce your risk by making sure that:

- there are adequate controls for non-check disbursements such as debit memos and wire transfers (for example, passwords for individuals authorized to make transfers, bank call-back verifications for telephone transfers exceeding a predetermined dollar amount, etc.)
- credit cards have predetermined spending limits, and
- any cash disbursements are reconciled daily.

Timely Bank Reconciliations

You indicated that bank reconciliations may not be conducted on a timely basis. This end-of-the-month procedure is an important part of your internal control system. In addition to making certain that these reports are prepared on a timely basis, you should also assign this task to a back-up staff member during periods when the person who conducts them regularly is on vacation. While many nonprofits feel that cross-training is a luxury, doing so in this area is important to testing your systems and detecting any inappropriate practices.

You may also want to verify that your bank reconciliation procedures for all accounts include the following with respect to deposits:

- Comparison of dates and amounts of daily deposits as shown on the bank statements with the cash receipts journal.
- Investigation of bank transfers to determine that both sides of the transactions have been properly recorded on the books.
- Investigation of items rejected by the bank; for example, deposits or collection items subsequently charged back by the bank because of insufficient funds, etc., are investigated by a person independent of those responsible for receipt or recording of cash.

And check to see that your reconciliation procedures for disbursements include:

- Comparison of canceled checks with the disbursement journal as to number, date, payee, and amount.
- An accounting for the sequence of check numbers.
- Examination of canceled checks for authorized signatures.
- Examination of canceled checks for irregular endorsements.
- Examination of canceled checks for alterations.
- Review of voided checks.

The growing tendency of banks to scan checks and return miniaturized facsimiles rather than actual checks to the issuer makes all of the above steps increasingly difficult. If your bank has adopted this unfortunate practice, make certain that you're receiving a readable print out allowing review of canceled checks for the issues noted above. If the printout is illegible, contact the bank immediately and request a change in procedure.

Payroll Records

You indicated that payroll records and information may not be maintained in a local file or limited access fireproof safe. We recommend that you correct this situation as soon as possible. Some small

nonprofits feel that confidentiality issues are only of importance in larger organizations. But every nonprofit should identify confidential information and take steps to prevent the unintended or unintentional disclosure to persons without a need to know or access that information. Payroll records may include highly confidential information beyond earnings, such as mandatory deductions for child support or bankruptcy payments. An organization should not expose itself to invasion of privacy claims by treating this confidential information carelessly. As is true with other controls, the cost of taking simple steps to protect the privacy of payroll information is minimal. Many filing cabinets come equipped with locks, and for most organizations a special safe may not be required.

Preparation of Investment Schedules

You indicated that schedules of investments showing all income received may not be prepared monthly or reviewed by a responsible person. This may be due to a backlog of accounting tasks, or a small staff that makes it difficult to assign these two tasks to different persons with financial training. We suggest that you make it a priority to catch up with any outstanding investment schedules and update these on a timely basis in the future. Furthermore, if there is no suitable internal person available to review the schedule prepared by a staff member or contractor, consider having a member of the board review these schedules. Doing so may enable the organization to detect errors or transactions that are contrary to your investment policy before these issues escalate into a crisis for the organization.

Contracts and Procurement

This report contains recommendations on the subject of contracts. Most of your organization's money is spent on contractual obligations. When your organization employs people, buys goods, purchases services, rents space, and holds meetings, it does so by contract. Whether the contract is written or oral, long or short, it sets forth your rights as compared to the other party's. How you set the terms of those contracts can either increase or limit your liability exposure (not to mention anxiety and potential headaches).

Effective contracts help the contracting parties begin an endeavor with a shared vision of a desired outcome, provide options to limit risk and exposure if either party decides to withdraw from the relationship, minimize or prevent surprises about the cost of an activity, and provide a roadmap if things do not go as hoped and the relationship is terminated.

Typical Contract Problems

Some of the typical problems nonprofits encounter with contracting include:

- failing to limit contracting authority to designated persons
- not specifying expectations
- signing contracts that lack sufficient clarity
- not considering the possibility of termination, breach, or the possibility of circumstances that make it impossible to continue
- not realizing they have entered into a contract in the first place
- failing to assign responsibility for harm and the costs of harm
- failing to protect the nonprofit's assets, such as copyrights
- unexpected costs or disagreement about each party's responsibility for project expenses

As you review the recommendations in this report, remember that obtaining the assistance and advice of a lawyer licensed in your state is absolutely essential to protecting your nonprofit's assets and good name. Your mission is too important to risk losing it all in a lawsuit or over unfavorable (and avoidable) terms in a contract.

Contract Review Checklist

You are protecting your organization by having your contracts in writing. To judge whether you have clearly maximized the rights and interests of your organization, you should apply the following *Contract Review Checklist* to your agreements. Each of your contracts should identify:

- **WHY** you are purchasing this good or service and why from this person (It's a good idea to state this at the beginning of the contract in the Recitals or "Whereas" clauses).
- **WHO** you are contracting with, their legal status (i.e., a corporation, partnership, individual, limited liability company), their street address and phone number, and the principal contact person.
- **WHO** will be liable and in what amount if there are problems that lead to a lawsuit; they should indemnify you and hold you harmless for what is in their control and you may choose to indemnify the other party for harm that results solely from your own acts or omissions (Caution: you should never assume responsibility for something over which you do not have control.).
- **WHO** will own any assets that are produced (e.g. copyrighted material).
- **WHAT** goods or services are meant to be provided, conducted, performed, or accomplished,

stated in clear and explicit terms.

- **BY WHEN** the obligations will be performed (Consider having interim deadlines or progress mileposts).
- **WHERE** the performance (or any dispute, such as a lawsuit or arbitration about the performance) will occur.
- **WHERE** (and under which State's laws) any dispute, such as a lawsuit or arbitration about the performance will occur.
- **HOW** the performance will occur.
- **HOW MUCH** payment is expected and how and when the payment will occur.
- **HOW** the parties will handle confidential information.
- **HOW** the other party will pay for any liability or indemnification of you - you want to be certain that anyone who is indemnifying you maintains adequate insurance (you can request evidence of insurance such as a certificate of insurance or be named a co-insured).
- **HOW** you will pay for any liability you incur or any indemnification you provide - **make certain that your insurance fully covers the liabilities and indemnification you agree to.**
- **HOW** any termination will occur, by which parties, under which circumstances (only for unsatisfactory performance or also without cause), and under what terms (for settling amounts owed up until that point).
- **HOW** you will handle:
 - *Notices* to each other - you should specify the name and address for official correspondence.
 - *Waiver Clauses* - you always want to enforce your rights whenever they have been breached, regardless of whether you've ignored a problem previously.
 - *Merger Clauses* - are all the terms and conditions you want spelled out in the contract or are there some unwritten provisions or understandings? (e.g., "All enforceable provisions of this agreement are included in this written contract.") Without a merger clause, one could argue that other (unwritten) promises and assurances DO and HAVE BECOME part of the agreement enforceable against the party that made such promises.
 - *Binding on Heirs, Successors, and Assigns* - you want the other party to know that if they are replaced or succeeded by anyone else, that person is bound to fulfill the original party's contract obligations.

Indemnification

You indicated that you have not indemnified another party in a contract. When you avoid indemnifying another party you limit your organization's exposure to risk.

Special Contract Clauses

You should try to get any arbitration provisions in your contracts to state that any arbitration will take place in your community, such as the closest city to your offices. Similarly, try to get the Choice of Laws/Forum to indicate your state, so that you will not have to litigate a case (and transport and accommodate witnesses), hire new attorneys, or face any surprising laws in a far-away state.

Force Majeure Clauses

Most hotel and facility rental contracts as well as some service contracts include *force majeure* clauses, literally translated to mean a superior and irresistible force. In the event of any such "superior and irresistible force," this clause will excuse a party from performing their obligations under a contract.

It is important that you excuse the other party from their obligations *only* for events outside its influence or control. Ultimately, it is your event that will be affected and perhaps cancelled in the event of

anything you've approved as a *force majeure* reason for non-performance.

For example, a hotel, facility, or even a service provider would want a *force majeure* clause that excuses performance for acts of God such as hurricanes, tornadoes, and riots. That's fine because these are events outside their control or influence. But they may also include matters that they can control or influence, such as labor problems, or for any situation where they deem it "inadvisable" to provide you with their services. These factors are either within their influence or control, or are too vague for you to agree to.

Independent Contractor Agreements

You indicated that your nonprofit uses written agreements with independent contractors. This is an important risk management practice that can dramatically reduce the risk of a misunderstanding concerning the nature of the appointment and each party's expectations.

As you may know, an effective independent contractor agreement does not have to be lengthy (a page or two can often suffice). You should review your current contract form to make certain that, at a minimum, it contains the following information:

- Name, type of entity (e.g., corporation, limited liability company, partnership, other?), street address, telephone number, and individual contact person of the independent contractor.
- A description of the services being provided and a timetable with measurable mileposts for when specific aspects of the service/work must be completed.
- Compensation (on monthly/work completed basis) based on invoices with dates, hours, and services performed, reports on milestone completion of work, and any out-of-pocket expenses that are necessary for the performance of the services (such as travel, lodging, and meals), but only if approved in advance and supported by appropriate documentation.
- The term of the agreement (beginning when, ending when).
- Provisions for terminating the agreement:
 - How much prior notice is required before termination?
 - How much, if anything, must the parties pay upon termination?
- Statement clarifying that the contractor is an independent contractor solely responsible for determining the means and methods for performing the services and for its own payment of taxes, with no entitlement to workers' compensation, unemployment compensation, or any employee benefits, statutory or otherwise.
- Statement that the contractor shall at all times comply with all laws, rules, regulations, and ordinances applicable to the performance of the services described in the contract.
- Statement that information obtained from you and about your organization and its operations and clients is confidential.
- Statement that the contractor agrees that all creative ideas, developments and creations conceived in the performance of the contract are the property of the Organization and assigns all those rights to the organization.
- Statement that the contractor will not engage in discrimination.
- Statement that the contract is the entire agreement, which cannot be amended except in writing by both parties.
- The State of governing law and forum for any legal action.
- Statement that the work may not be re-assigned by the contractor (e.g., the contractor you choose has to do the work; he cannot have someone else do it).
- The signatures of both parties.

Written Fundraising Contracts

Hiring a fundraiser without a written contract is especially perilous for several reasons. First, there are many different arrangements for compensating fundraisers. Second, fundraising activities vary in nature and scope. This creates an enormous possibility of reasonable (never mind, self-serving) misunderstanding. Consider putting your fundraiser's agreement in writing, using the Contracting with Fundraisers Checklist below:

Contracting with Fundraisers Checklist

WHO -

- is expected to render services under the contract and who in your organization is assigned to oversee the fundraiser?
- is responsible for complying with applicable law (i.e., charitable solicitation laws, avoiding lotteries where they are unlawful, registering for bingo/ casino nights in local jurisdictions that require it)?
- can the fundraiser hire (e.g., its own subsidiary or friend?) to perform the services needed under the contract (e.g., do the printing, mailing, provision of thank you mugs, t-shirts) and have you reserved the option to obtain the goods/ services more inexpensively yourself?
- owns and controls all the names and data of people who are on your mailing list and who respond to your appeal? This should always be you. To enforce this, remember to seed your list with friends' names so that you can detect any later unauthorized use of the list by the fundraiser.

WHAT -

- performance is expected of whom? Are you expected to provide any services, information, assistance (e.g., letters requesting donations, introducing donors to the fundraiser)?

WHEN -

- will each step of the contract be performed and by when completed?
- are the deadlines and timelines with measurable mileposts by which you can judge the presence or absence of progress by the fundraiser?
- does the fundraiser report back to you about results after they make any appreciable effort?
- and how will any contract extensions be done? This should be only by mutual written consent, not automatic.

WHERE -

- will performance occur? Will the fundraiser work from your office? Perform any work from your office?
- Will the checks be sent (to the fundraiser, to a lock box, to you)? Some state laws require funds raised for charities to be in an account controlled by the charity.

HOW -

- Will performance be rendered?
- Will you review the fundraiser's materials or scripts for accuracy, taste, and presentation before mailing, calling, or meeting with a prospective donor?
- Do they have to explain to you their choice of rented mailing lists and do you have input/ veto power? Are the lists de-duplicated (to save you printing/ mailing/ remuneration costs)?

WHY -

- are you hiring the fundraiser? Is it to create an endowment, identify your cause to the maximum number of potential contributors, maximize immediate financial return, establish a baseline of donors, learn how to do the fundraising yourself? The answers to these questions have implications about how you want the fundraiser to work and what they should say to your potential donors.

HOW MUCH -

- are you paying the fundraiser and how (straight payment for the overall contract, by the hour, a percentage of what is raised)?
- of your money are they entitled to spend? Have they given you a budget for out-of-pocket items (i.e., printing, and mailing) that they must stay within? Are they planning to give donors a premium (i.e., send an item - like a mug, T-shirt, umbrella) to thank donors for their contribution?
- are they allowed to use your mailing list - how many times can they re-contact your potential donors and over what period of time?
- liability are you exposed to for the fundraiser's efforts. Has the fundraiser indemnified you for the activities that the fundraiser controls and performs?

Facility Contracts

Hosting a special event at a facility invariably means signing a contract that the hotel or facility presents to you. Do not assume that you have to accept the terms they present, just because the terms are already in writing. You should review your facility rental agreements to make sure of the following:

- INDEMNIFICATION/ INSURANCE -In general, remember that you should not agree to indemnify a hotel or other facility for something over which you have no control. The fee you pay to rent the facility includes the cost of the organization's various professional services, such as security. (Also, see the information provided under the subtopic, "Purchasing Goods and Services.")
- AUXILIARY SERVICES - Does the contract restrict you to using only the hotel's audio/visual/computer equipment and display furnishings of the hotel or its vendor, or face paying a surcharge?
- COSTS/PAYMENT TERMS - Does the contract give you free meeting space if your attendees rent a certain number of rooms, and otherwise state the cost of renting the meeting rooms? Does the contract include an attached list of catering and set-up/ takedown charges?
- ADA COMPLIANCE - Does the hotel contract specify that the hotel assumes all responsibility for ensuring that the premises comply with the requirements of the Americans with Disabilities Act?
- LIABILITY FOR ALCOHOL CONSUMPTION - Does the hotel contract specify that the hotel assumes all responsibility for liability and injuries that result from the hotel's service of alcoholic beverages to any intoxicated person?
- FORCE MAJEURE - PERMISSIBLE REASONS TO TERMINATE THE CONTRACT - Does the contract contain a *force majeure* clause that purports to excuse the hotel from performing under the contract only for events outside the hotel's control (acts of God such as hurricanes, tornadoes, riots)? Does it also try to excuse the hotel for non-performance for matters that the hotel can affect or control, such as labor problems, or for such broad and vague reasons such as if it is "inadvisable" for the hotel to provide the facility to you?
- PUBLICITY RIGHTS AND OBLIGATIONS - Does the hotel contract allow you to use and post sufficient signs for your event? Does it require the hotel to get your approval before circulating anything that contains your organization's name and logo?
- OVERBOOKING - Does the hotel contract allow you to cancel without penalty? Does it require

the hotel to find you suitable alternative space if there is (1) excessive and disruptive construction during your meeting or (2) if there is a meeting at the hotel that directly conflicts and competes with the subjects and substance of your meeting?

- FINANCIAL TERMS - Does the contract explain who can charge to the Master Account and for what purposes? Can you avoid late payment penalties for billed amounts that are in dispute?

Sleeping Room Contracts

No doubt, you have been asked to sign an agreement by the hotel or facility where your participants are staying. Remember that hotels will insert the language most favorable to them. Just because they've put those terms in writing does not mean that you cannot negotiate changes. There are a number of points for you to consider before signing hotel contracts for sleeping rooms. Based on the size and nature of your attendee group, some of these will be more important to you, but all should be considered:

- ROOM GUARANTEES - Hotels and rental facilities will usually try to obligate you to rent a certain number of sleeping rooms or purchase a certain amount in catering goods and services for your event. If you have been asked to guarantee the rental of a certain number of rooms, make sure it is not too high and try to negotiate a margin of variance as a cushion (e.g., responsible for renting 100 rooms on your peak night within a range of 15%).
- CANCELLATION POLICY - Using a so-called penalty or liquidated damages clause, the hotel will seek to charge you a penalty for cancellation or for renting fewer rooms than anticipated. If the hotel proposes a cancellation provision, be sure to use whatever data you can from your previous events to try to avoid over-estimating your anticipated room rental and catering spending.
- CALCULATION OF PENALTY - Try to make sure that the cancellation policy does not require you to pay as a penalty the **full room rental rate**, or more reasonably only for their lost profits, which is all they would have gained if you had used the room (i.e., if you rented the room, all the hotel would net would be its profit; if you do not rent the room, all the hotel is entitled to is the profit, not the entire room rental amount - it did not work for it!).
- CREDIT FOR ROOMS RE-SOLD - Try to make sure that you are **excused from paying for any reserved, unused rooms that the hotel re-sells** (they should not be able to collect **twice** for rental of the same room! - this is called mitigating damages).
- ROOM RATES - Does the hotel contract disclose and guarantee the room rental rates for single, double, and triple occupancy and guarantee that those rates will be the lowest offered any person or group in the hotel during your stay there?
- COMPLIMENTARY ROOMS - Does the contract give your group complimentary rooms (and of what type) for every specified number of rooms rented by your attendees?
- EXHIBIT SPACE - If you are using exhibit space, does the agreement charge you for it (sometimes it is complimentary based on sleeping room use)? Does it state the hours of access, security personnel, areas to secure property, responsibility/ liability for property loss?
- ROOM AVAILABILITY - Does the agreement:
 - indicate how long the hotel will hold rooms in your reserved room block for your members and prospective attendees?
 - honor your negotiated room rate even for those who register after the cut-off date?
 - state the time by which the rooms will be available for your attendees to check-in?
 - indicate the number of hotel people who will be available to help with check-in?
- OVERBOOKING - If the hotel overbooks and has no space for some of your attendees with confirmed reservations, is the hotel required to:
 - find comparable rooms in a different hotel?
 - pay for transportation from that hotel to your hotel?
 - pay for a long distance call home so attendees can identify where they are staying?

- pay for the attendees' stay in the new hotel?
- give the attendees the first available space in the event hotel?

Rental Agreements

You indicated that you have a written agreement with the person or organization renting property from you. As in other cases, written agreements are good risk management tools. We invite you to consider reviewing your written contracts to make certain that they include the following:

1. The name, street address (if available, a street address other than the address of the property the lessee is renting from you), contact person, and telephone number of the person or organization renting property from you;
2. The address and a specific description of the property with a statement about its current condition;
3. The duration that you are leasing the property;
4. The rental amount due, when, and where;
5. Any security deposit you obtain from the lessee and whether they will earn interest on it;
6. Any right you have to enter and inspect the property at reasonable times and upon reasonable notice;
7. Permission to do any credit checks that you want to do;
8. The permitted uses of the property;
9. That the lessee cannot make any alterations without your prior written permission;
10. Who is responsible for the property and/or liability insurance on the property and the evidence that this insurance is in force; and
11. An indemnification clause protecting your nonprofit from liability arising out of the rental of the property and requiring the lessee to name your nonprofit as an additional insured on the lessee's general liability policy.

NOTE: Before you lease any of your real property, make sure that your interest in the property is properly filed with your local land records.

Property Leases - Your Nonprofit as Lessee

To protect your organization, you should have a lease that includes the following terms:

- The name, street address, contact person, and telephone number of the landlord
- A specific description of the property with a statement about its current condition
- The landlord's obligation to keep the property in good condition
- The duration that you are leasing the property from the landlord
- The rental amount due, when, and where
- Some leeway, perhaps 3-5 days, after the rent is due before it is considered in default
- Whether you owe a security deposit and how much interest you will get on it
- Limiting the landlord's right to enter and inspect the property only at reasonable times and with reasonable notice
- What insurance the landlord keeps on the property
- Security
- Hours of access
- Parking
- Statement that you have a certain number of days to inspect the property after occupancy (or after receipt) to ensure it is in good condition
- Your right to quiet enjoyment
- Who has the obligation to pay for charges for:

- Water
- Sewer
- Garbage removal
- Gas
- Electricity
- Heating and cooling (and who controls and when it will operate weekends, holidays)
- Janitorial service
- Maintenance and upkeep
- Lighting fixtures
- Carpeting
- Any build-out, redecorating, or painting
- Any signs in the lobby and on your door
- Your right to vacate upon condemnation or if the premises become unusable
- A limited definition of default so that the lease cannot be easily terminated against your interests
- Provision for any elective termination to allow either party to choose to terminate the agreement for any or no reason, stating how much notice and how much money would be owed if there is a termination
- If you are required to indemnify your landlord, does the language in the lease clearly state that you are responsible only for the section of the building that you lease and over which you have control of the maintenance? For example, you should not assume responsibility for injury in a parking lot maintained by the landlord.

Obtaining Legal Review of Contracts Prior to Execution

By using legal counsel to draft or review contracts, you are engaging in the best possible practice to limit your organization's contracting liability. In fact, using counsel immediately limits your organization's contracting exposure in three ways. First, you are virtually assured that every significant contract your organization has will be in writing. (Your lawyer already has - or will - insist upon that!). Second, you can expect that the contract will address all the general contract elements in a way that maximizes your organization's interests and protection. (That's good legal practice in contracting.) And third, as much as possible, your organization's specific needs and demands with each particular contract (e.g., your fundraising, hotel, and independent contractor agreements) will be reflected in when, where, and how the work, services, or goods will be provided to your organization.

Human Resources

This report contains recommendations in the area of employment practices. Every nonprofit with paid staff faces the possibility of a claim or lawsuit alleging illegal or unfair employment practices. The financial and other consequences of a claim can be substantial or devastating. Every organization can take steps to reduce the likelihood of a claim, and ensure a strong defense to charges of wrongdoing.

As you review these recommendations, remember that obtaining the assistance and advice of an employment attorney licensed in your state is absolutely essential to protecting your nonprofit's assets and good name. Your mission is too important to risk losing it all in a suit you could have avoided.

Few nonprofits can survive over the long-term without paid staff. In most cases, the hiring of paid staff is an important step in enabling an organization to achieve its mission. Despite all the good that having paid staff does for your organization, the fact that you employ paid staff means you must be prepared for a whole host of employment-related risks, including administrative complaints and lawsuits. It is impossible to avoid these risks altogether without forgoing paid staff. We don't imagine you're willing - or in position - to do this.

You indicated that your staff consists of more than 50 persons. The size of a nonprofit's workforce affects a range of employment practices, including salary and benefit administration and the application of federal, state, and local employment laws. Larger and more diverse nonprofits require more structure and planning in managing employment practices.

All major federal anti-discrimination laws apply to your organization, including:

- Title VII of the Civil Rights Act of 1964 (Applies to employers of 15 or more employees) - It is illegal to base employment decisions such as hiring, promotions, demotions, pay practices, and terminations on the characteristics of race, color, religion, sex ("sex" includes the prohibition against sexual harassment), and national origin.
- Americans with Disabilities Act of 1990 (Applies to employers of 15 or more employees) - Prohibits discrimination against qualified individuals with a disability (those who with or without accommodation are capable of performing the essential functions of the position). Those who are protected include: currently disabled individuals, persons having a record of impairment, persons who are perceived as having an impairment or related to or associated with persons who are disabled/perceived as having an impairment.
- Pregnancy Discrimination Act of 1978 (Applies to employers of 15 or more employees) Defines sex discrimination under Title VII as including childbirth, pregnancy and related conditions, and makes it illegal to refuse to hire on the basis of pregnancy. There may be exceptions, such as when the employee is immediately unavailable, e.g. hiring an accountant during tax season who is unavailable in April. The PDA does not bar employers from requiring pregnant employees to meet objective standards of performance as long as those expectations and policies are applied equally to other employees.
- Age Discrimination in Employment Act, which applies to employers of 20 or more employees. This law protects employees age 40 or older from discrimination in employment. Be aware that if you grow to 20+ employees, this law would apply to your organization.

In addition to the above anti-discrimination laws, the following federal employment laws also apply to your organization:

- Fair Labor Standards Act - (FLSA) (applies to all employers) Governs work hours and

compensation issues. Defines who is exempt from overtime and who is an "employee" entitled to minimum wage. Each state has its own regulations that complement the federal law.

- Occupational Safety and Health Act ("OSH Act") (applies to all employers) - Regulates the safety of equipment and working conditions. The general duty clause of the Act [Section 5(a)(1)] states that each employer "shall furnish . . . a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." Every employer covered by OSHA who has more than 10 employees, except for certain low-hazard industries such as retail, finance, insurance, real estate, and some service industries, must maintain OSHA-specified records of job-related injuries and illnesses. There are two such records, the OSHA Form 200 and the OSHA Form 101. Each employer, regardless of number of employees or industry category, must report to the nearest OSHA office within 8 hours of any accident that results in one or more fatalities or hospitalization of three or more employees. Such accidents may be investigated by OSHA to determine what caused the accident and whether violations of OSHA standards contributed to the event. All nonprofits should keep their workplaces free of recognized hazards that may cause death or serious physical harm to employees, even if OSHA does not have a specific standard or requirement addressing the hazard.
- Drug Free Workplace Act of 1988 - ("DFWA") Requires employers with 50 or more employees or \$100K in federal contracts to maintain a drug-free workplace policy and drug awareness program.

And the following federal employment law may apply to your organization:

- Fair Credit Reporting Act - ("FCRA") Requires employers who use credit companies to screen applicants, to report to the applicant when the results of the credit check cause the employer to disqualify the applicant.
- The Employee Retirement Income Security Act of 1974 (ERISA), the Worker Adjustment and Retraining Notification Act of 1988 (WARN), and the Clean Air Amendments of 1990 apply to employers with 100 or more employees.

In addition, because your workforce consists of 50+ employees, the Family and Medical Leave Act of 1993 (FMLA) also applies to your organization. The FMLA is a significant statute because it gives employees protection of their health benefits during a leave of absence and the right to re-employment after a family leave. The FMLA requires employers with 50 or more employees (either full or part-time) to give eligible employees up to twelve weeks of unpaid leave when the employee or an immediate family member has a "serious health condition" or needs leave to care for a newborn child, an adopted child, or a child who has been placed with the employee for foster care. "Immediate family member" is defined as a child, spouse, or parent. During the twelve weeks of leave the employer must maintain the employee's health and other benefits as if the employee were still actively at work, and must preserve the employee's position so that the employee can be returned to the same, or to a "substantially similar position" at the end of the leave.

Your state may have its own family leave law. Make sure that you are aware of how your state's leave law coordinates with the federal FMLA.

The FMLA can be found in the Code of Federal Regulations, 29 CFR Section 825. For more information, contact the local Department of Labor, or visit the DOL's web site at: <http://www.dol.gov>. There is a helpful section pertaining to the FMLA at that site.

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Multiple Locations

You indicated that you employ workers at more than one location. While a structured approach to employment practices is advisable for all nonprofit employers, it is particularly important for nonprofits with large workforces or workers deployed at more than one location. Multiple locations increase the likelihood that an employee will not be notified in a timely fashion of a new or changed policy. Therefore, it is very important that you commit to developing standardized, written employment policies and identify the most effective methods for ensuring that everyone in the organization receives timely notification of policies and practices.

Independent Contractors

You indicated that your nonprofit uses independent contractors. One of the most important risk management considerations with respect to the use of independent contracts is their proper classification. It's vitally important that the persons you believe to be independent contractors actually are ICs versus misclassified employees. State labor departments and the federal Department of Labor don't really care what you call these workers - it's a matter of what their proper classification should be. Many nonprofits make the mistake of calling staff independent contractors in the hopes of avoiding the need to pay employment taxes, insurance, etc. There are steep penalties (back taxes and fines) when you improperly classify employees as ICs. You should have a contract with any independent contractors that specifically includes a provision indicating that they, not you, are responsible for paying their own

employment taxes and insurance expense.

It's important to keep in mind that there is no single rule or test for determining whether an individual is an independent contractor or an employee for purposes of the Fair Labor Standards Act (FLSA).

In its review of relevant cases, the U.S. Supreme Court has found that the following factors are significant in determining whether an employment relationship exists:

1. The extent to which the services rendered are an integral part of the principal's business.
2. The permanency of the relationship.
3. The amount of the alleged contractor's investment in facilities and equipment.
4. The nature and degree of control by the principal.
5. The alleged contractor's opportunities for profit and loss.
6. The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.
7. The degree of independent business organization and operation.

Although prior guidance suggested otherwise, we now know that there are some factors which are immaterial in determining whether there is an employment relationship. These include: the place where work is performed, the absence of a formal employment agreement, whether an alleged independent contractor is licensed by State/local government, and the time or mode of pay.

For guidance directly from the U.S. Department of Labor, consider visiting the following Web site: <http://www.dol.gov/esa/regs/compliance/whd/whdfs13.htm>.

The Human Resources Function

A cornerstone of effective and legal employment practices is the development and consistent application of sound policies. Unfortunately, many nonprofits develop and administer employment policies in a haphazard, disorganized fashion. Where practical, it is advisable to centralize the human resources function. You indicated that responsibility for human resources in your organization is centralized in a position or department. This is an excellent first step to ensuring the development of coherent and effective policies.

Periodic Review of Employment Policies

You indicated that you have a process in place to ensure the periodic review of your employment practices. How often you review these practices depends on a number of factors, including your nonprofit's hiring frequency, rate of turnover, employee satisfaction, resource constraints or opportunities, and size. Organizations facing rapid growth or high turnover should review hiring strategies and results semi-annually. All aspects of the recruitment and selection process should be considered in light of the organization's hiring goals and commitment to not pursue strategies that adversely affect a protected group of applicants. Smaller organizations or those with very low turnover may choose a less rigorous schedule, such as annually.

The Board's Role

Nonprofit boards have an important role to play in establishing appropriate employment policies and ensuring that an organization follows its policies.

The board must recognize that the policies included in an Employee Handbook or Personnel Policy

Manual - as well as those found in other documents, such as employment letters, and those policies which emerge from practice - not only impose responsibilities or requirements on the employee (such as coming to work on time), but also create promises that the employer must honor and a court will enforce.

In most instances, a nonprofit board should avoid involvement in the day-to-day activities of personnel management - hiring (other than the executive director), promotions, discipline (except when the board has a defined role in a grievance process), and terminations. Note: in very small or start-up nonprofits the board may be involved in these operational issues. Overall, the board's main concern is the adoption and implementation of personnel policies and practices of the nonprofit, not its daily personnel actions.

Every board should be certain that its employment policies comply with applicable federal and state laws. The board should seek guidance and assurance on this matter from an employment attorney licensed in the state in which the nonprofit operates. In addition, each board should be confident that the nonprofit's managers and supervisors are applying the policies uniformly. Board members should raise any concerns about special or preferential treatment with the chief executive officer.

For instance, did a manager terminate an entry-level employee for an infraction that he or she would have forgiven in a long-time staff member? This scenario raises the issue that every board should understand the nonprofit's policies concerning termination. Is "gross misconduct" - conduct for which an employee may be subject to immediate dismissal -- specified in the handbook? Is it clear in the handbook that certain policy violations (such as bringing a weapon to work) constitute grounds for immediate dismissal? The board should be informed and educated on these issues to ensure it fulfills its legal responsibilities. This does not mean that the board should review or question every employment action. Board members should, however, raise questions and seek clarification whenever they have reason to believe that the organization's employment policies are not in compliance with legal requirements or have not been followed.

Because termination of an employee raises considerable risk to the nonprofit, the board should know what the nonprofit's procedures are for termination and have total confidence that these procedures are adhered to.

You indicated that your key employment policies are in writing. Congratulations! Written policies and procedures are the starting point for defensible, consistently applied, and ultimately effective employment practices in every nonprofit. There is no substitute for committing the organization's policies to writing. Written employment policies serve several important purposes, including:

- *Written policies ensure consistency.* Written policies serve as an effective way to communicate a common message to all employees. Each person receives the same written statement of policy. The organization can avoid the risk that various supervisors will interpret a policy differently, causing inequitable treatment of employees. Employees also feel they are treated fairly if the same standards are applied consistently.
- *Written policies provide admissible evidence* of the organization's policies, should the organization need to defend its practices in court or at an administrative hearing. Many employers have been held liable for unlawful employment practices when they were unable to prove that a lawful policy existed and was followed. The absence of written policies leaves a nonprofit needlessly vulnerable to legal challenge.
- *Written policies establish the business-related reason for an employment action*, reducing the possibility that the employer's conduct will be challenged as subjective and discriminatory.
- *Additionally, some laws, such as the FMLA and various state laws, require employers to have a written policy on a specific state or federal law.*

Employee Handbook

You indicated that you have an Employee Handbook or Personnel Policy Manual. Most employers choose to codify key, written employment policies in a document that can be distributed to new employees. This reduces the likelihood that a key policy will be omitted and not communicated to the employee. As you have no doubt discovered, a Handbook can be an invaluable management tool. Many employer handbooks, however, leave nonprofits needlessly vulnerable to legal challenge.

Why? Because they:

- are out of date
- are distributed casually
- are not followed, and
- contain promises that the nonprofit does not keep.

A handbook that is out-of-date, distributed casually, or ignored by management, is a weapon that could be used against your nonprofit. It's not enough to have a Handbook, the document must be:

- kept up-to-date, both in terms of federal and state laws as well as your organization's practices;
- distributed officially to employees, with the requirement that employees formally acknowledge receipt, understanding and willingness to comply with the policies therein; and
- followed closely by management in all employment matters.

Up-to-date -as your organization grows, different federal and state employment laws may be triggered. So you need to keep abreast of the law and review your Handbook regularly to ensure that you remain in compliance. When an employment practice at your nonprofit changes, the Handbook should be updated.

Official Distribution -Of almost equal importance to putting employment policies in writing is the need to obtain a written confirmation from each employee that they have read, understand, and agree to abide by the rules of the workplace as presented in the policy manual or handbook. When new policies are developed, the handbook should be revised and redistributed, or a separate document describing a new policy should be circulated. In either case, each employee should sign an Acknowledgment that s/he received the revised (or new) policy, and the Acknowledgment should be maintained in the employee's personnel file. Many nonprofits include the Acknowledgment as part of the offer letter.

Adherence to the Handbook Policies-While the use of an Employee Handbook will not generally disrupt the "employment at will" relationship, courts will not shy away from requiring employers to live up to promises made in a handbook. So don't make "promises" or commitments in your Handbook that you're unwilling or unable to keep. Don't allow supervisors to stray from the policies outlined in your Handbook.

Legal Review of Written Policies

You indicated that your Employee Handbook was reviewed by an employment attorney licensed in your state before it was distributed. This is an excellent practice and we urge you to obtain further review and counsel before making any changes to this important document.

You indicated that your Employee Handbook was reviewed by an attorney during the past year. We urge you to continue the practice of obtaining regular review of your Handbook by an attorney with expertise in employment matters. This practice will go a long way to protecting your organization from making costly missteps or creating unnecessary vulnerabilities in establishing and administering employment policies.

Policy Changes

You indicated that when a new employment policy is developed, the Employee Handbook is updated and redistributed. While this practice ensures that an up-to-date and complete list of employment policies is readily available to each employee, for most nonprofits this practice is too unwieldy. In addition, by distributing a new Handbook altogether, the changes from the prior version may not be obvious. Therefore, if you are distributing a new Handbook each time a policy change is made, you should probably include a cover letter that highlights the key changes, or require that employees reread the entire Handbook in its entirety. Also, if you're not already doing so, consider requiring that each employee sign a new acknowledgement indicating receipt, understanding and acceptance of the policies contained in the updated Handbook, such as:

"I hereby acknowledge that I have read and agree to abide by the policies of the [name of Nonprofit] as outlined in the revised Personnel Policy Manual [or other name of document, such as Employee Handbook] provided to me on [date of distribution], which I acknowledge supercede and replace all prior policies of the [name of Nonprofit].

Signature

Date

Legal Review Prior to Implementing Policy Changes

You indicated that your organization does not consult an employment attorney before revising or adopting employment policies. Many nonprofits seek legal counsel only for what they consider major projects or policy changes. Others operate without the benefit of legal counsel. Employment-related claims represent the largest share of lawsuits filed against nonprofit organizations that are covered under directors' and officers' insurance. Many allegations of wrong-doing can be avoided through the adoption of and adherence to sound employment policies and practices. An employment law specialist licensed in your state is the most appropriate source for guidance in this complicated area. While it may cost you something to obtain legal review of your employment policies, it is far less than you might spend defending a lawsuit alleging wrongful employment practices.

Tracking Policy Distribution

It is prudent to request newly hired employees, whether in the offer letter, during orientation or another time, to sign an acknowledgement of receipt of personnel policies that includes a commitment, signed by the employee, to adhere to the policies. We recommend that you keep these acknowledgements in employee personnel files.

Be sure to keep a copy of each employee's acknowledgement in their personnel file. In one instance an employer could not prove that a particular employee had received the newly revised version of personnel policies and therefore the former version of the policies applied to her termination. The court required the employer to re-hire the employee because her termination, under the prior policies, was found to be invalid.

Preserving Management Discretion

In most states, it is prudent to emphasize management's right to make unilateral changes in policies at the nonprofit's discretion.

At-Will Disclaimer

You indicated that your Handbook includes a prominent disclaimer concerning at-will employment. You should add a similar disclaimer to your application for employment and your hire letters. To be effective, a disclaimer must be "prominent," which has been interpreted in several states to mean in bold face type, and placed at the front of the handbook. While some employment experts caution against opening the employee handbook with disclaimer language, commenting that it may establish a negative tone, don't bury your disclaimer in the middle of the handbook or use all caps or small type which makes it difficult to read.

EEO Policy

Every state except Alabama, New Hampshire, and Montana, has a statute that prohibits nonprofit organizations from discriminating in employment against various protected groups identified in the individual states' statutes. As a reminder nonprofits with more than 15 employees are covered by Title VII. Whether your nonprofit is covered by anti-discrimination statutes based in state or federal law, or both, having a written policy that articulates an anti-discrimination policy is sound risk management. Nonprofits with federal contracts in excess of \$10K are also required by law to adopt "affirmative action" hiring policies towards women, minorities and special veteran groups. Therefore, only nonprofits with federal contracts in excess of \$10K are required by law to have what is known as an EEO policy. Nonprofits that have federal contracts in excess of \$50K must also have a written Affirmative Action Plan, which is in addition to the EEO policy statement. Whether or not your nonprofit technically must have an equal employment opportunity policy, such a policy is prudent practice since it reminds the organization and its stakeholders that the nonprofit values all people and observes non-discriminatory practices.

Affirmative Action Plan

Nonprofits with more than 50 employees and contracts or subcontracts with the federal government amounting to \$50,000 or more are required to have a written affirmative action plan. If this requirement applies to your organization, your plan must include:

- A detailed analysis of the employer's current workforce by race and sex;
- An analysis of whether members of ethnic minorities, special disabled veterans, or females are statistically underrepresented or underused in the workforce;
- The establishment of guidelines for recruiting and hiring in job categories in which minorities or females are underrepresented;
- Action programs necessary to achieve the stated goals and to remedy identified problems areas; and
- Timetables for achieving these goals.

If your nonprofit is considering bidding on a government funded project, the pieces of the AAP must be in place in order for the nonprofit to qualify for the contract with the government. If you already have a government contract, make sure an internal audit is conducted to assess compliance. If the Office of Federal Contract Compliance Programs (OFCCP) pays your nonprofit a visit, you can be sure that any missing requirements, such as the AAP, will be exposed.

Workplace Violence Policy

You indicated that your nonprofit has a workplace violence policy. This reflects your understanding that violence is a reality in many workplaces today. Nonprofits, like other employers, need to train staff to be

aware of the risk of workplace violence. Review your current workplace violence policy to make certain that it includes:

- Zero tolerance for violent, abusive conduct, threats of violence, or violent language;
- A complaint procedure;
- Emergency procedures in the event of any serious act of workplace violence;
- Designation of management personnel and security personnel who will be responsible to investigate complaints of violence and who will be responsible in the event of an emergency;
- Screening of applicants for past criminal conduct;
- Reservation of management's right to review employee e-mail, voice mail, and computer files.

While policies and raising awareness cannot completely insulate any nonprofit from the risk of workplace violence, the fact that the nonprofit has undertaken good faith efforts to educate and prepare staff for emergencies, and has acted promptly to address concerns of the incompetence of staff or threats of workplace violence, conveys the message that safety is a primary concern.

The Occupational Health and Safety Administration (OSHA) publishes information on workplace violence on its Web site. According to OSHA, the most extreme form of workplace violence, homicide, is the third leading cause of fatal occupational injury in the United States. In 2000 the Bureau of Labor Statistics reports that there were 674 workplace homicides, accounting for 11% of the total 5,915 fatal work injuries in the U.S. Not all workplace violence incidents are fatal. According to the National Crime Victimization Survey, between 1993 and 1999 in the United States, an average of 1.7 million violent victimizations per year were committed against persons who were at work or on duty. Visit the following site for more information: <http://www.osha.gov/SLTC/workplaceviolence/>.

Technology Policy

A comprehensive office technology policy should address privacy and appropriate conduct concerns. Consider reviewing your current policy to make certain that it:

- Prohibits or limits personal use of the Internet and e-mail while at work and prohibits personal use of the nonprofit's hardware and software or copying of the nonprofit's software;
- Defines the systems used at work as the property of the nonprofit;
- Prohibits use of the telephone, facsimile, or e-mail system for the dissemination or solicitation of information about for-profit ventures, religious beliefs or political causes, or any non-job-related business;
- Prohibits use of the telephone, facsimile or e-mail system to create or transmit any offensive, hostile, sexually explicit or suggestive messages, racial slurs, gender-specific comments or any comment that is unprofessional or offensive regarding someone's age, race, color, creed, sexual orientation, religious beliefs, national origin, gender, disability, marital status or any other protected category;
- States that the nonprofit's e-mail system may not be used to upload or download any protected, copyrighted, or proprietary information;
- States that the nonprofit reserves the right to review, audit, intercept, access and disclose all messages created, received, or sent through voice mail, facsimile or the e-mail system for any purpose, and that the content of such communications may be disclosed by the nonprofit for any purpose with or without notice to the employee;
- States that the confidentiality of any message transmitted over the nonprofit's telephone, facsimile or e-mail system should not be assumed;
- States that the use of a password does not indicate that the employee should have any expectation of privacy in computerized communications; and
- States that the nonprofit will discipline any employee who violates the office technology policy.

and that violations may result in termination of employment.

Workplace Privacy Policy

You indicated that you currently have a Workplace Privacy Policy. We recommend that you review your policy to make certain that it:

- reminds staff that work areas (including desks, filing cabinets, etc.) are the property of the nonprofit.
- requires that employees consent to monitoring.
- cautions employees not to have an expectation of privacy in voice mail, e-mail or requires consent to monitoring.

Workplace Safety Policy

Your workplace safety policy is an important component of your risk management program. As a reminder, there are three important goals for workplace safety policies. A primary goal is to establish the expectation that it is the responsibility of all personnel to create and maintain a safe work environment. This aspect of the policy may address emergency procedures should a potentially dangerous situation develop on site. A second goal is to address the organization's obligations under the Occupational Safety and Health Act to maintain a safe workplace and reduce the risk of employee exposures to health hazards. The third goal is to ensure that the organization complies with all requirements of the organization's workers compensation insurance carrier. Typically the carrier requires prompt reporting of all work-related injuries and illnesses.

Remember that:

- Violence, such as recent incidents where school children and community groups were targets of terrorism, could affect your organization. Every nonprofit must be prepared to respond to potential situations endangering clients, staff and the public.
- OSHA regulations require that all workplaces train their staff annually concerning workplace hazards, such as hazardous chemical substances and blood borne pathogens.
- Most workers compensation insurance policies require the organization to report a work-related injury or illness within a certain number of days, or risk loss of coverage. State law may require the reporting of claims with a certain number of hours. In California... To ensure proper coverage, it is prudent for the organization's policy to require employees to report any incidents resulting in work-related illness or injury immediately or within 24-hours.
- If your organization's activities include taking care of children, the elderly or other vulnerable populations, the organization's workplace safety policy should require employees to use universal precautions when applying first-aid or providing personal care to clients.
- Exposure at the workplace to diseases that are transmitted by body-fluids, such as Hepatitis and AIDS, is regulated by OSHA. If any of your employees experience an "exposure incident" at work, the organization is required to pay for the employee to be tested and immunized for Hepatitis B. Many organizations have a policy that specifically addresses Hepatitis B immunizations.

Sexual Harassment Policy

You indicated that your Employee Handbook includes a policy specifically prohibiting sexual harassment. As you know, the risk of liability for harassment may also come from outside the organization: clients, vendors, consultants, board members, or a member of the general public could

pose a threat of sexual harassment to your staff. Your written policy sends a message to staff that the organization will not tolerate harassment and helps ensure that your staff will know what to do in the event they experience or observe prohibited harassment.

Your policy should also require the reporting of observed or experienced harassment at the workplace. It is to the employer's advantage to have knowledge of alleged wrongdoing. Once the nonprofit knows of allegations of improper conduct, steps can be taken to minimize the potential harm to victims -- and in so doing to minimize potential liability to the nonprofit. By taking swift and effective remedial action, many employers have been able to reduce their liability or eliminate it altogether.

Congratulations on having a written policy in place. We recommend, however, that you review your policy to make certain that it:

1. defines prohibited conduct;
2. encourages reporting of any offensive conduct *before* it rises to the level of a hostile environment and imposes no barrier on reporting complaints, such as requiring that complaints be in writing;
3. requires the reporting of observed or experienced harassment at the workplace;
4. explains the rights of complainants under the policy (such as not to be retaliated against and to have complaints and the investigation file maintained in confidence);
5. describes procedures for the investigation of complaints;
6. contains a description of the consequences for breach of the policy; and
7. provides at least two persons to whom the employee can report complaints to avoid any claim that the employee is excused from reporting because the person designated to accept complaints was the harasser, or a friend of the harasser.

You indicated that your Handbook describes your internal complaint procedure for sexual harassment. The burden on employers to promptly investigate and respond to complaints has increased in recent years. A well thought-out and prescribed complaint procedure is an excellent risk management tool. It sends a strong message to your employees that you intend to follow-up on any complaints of harassment and takes the guessing out of the process when an actual complaint is received.

Job Descriptions

Job descriptions should be used during the hiring process so that candidates for a position can review the job description and answer the question "Are you able to perform all the functions of this position?" Make sure that your written job descriptions are up to date and describe "essential functions." Identifying the essential functions is necessary in the event that an employee becomes disabled and there are concerns whether the employee is qualified. Essential functions are those tasks which are essential to the job. Examples are: the ability to lift a certain number of pounds, drive a van, carry a child, or raise arms over head. It is also helpful if the job descriptions identify whether the position is "exempt" from overtime or "nonexempt."

Employment Applications

Employment applications are important risk management tools. We suggest that you review your current application to determine if it contains:

- an "at-will employment" disclaimer that expressly states that the applicant understands that employment with the nonprofit is on an at-will basis;
- a truth clause or false information warning;
- an authorization to conduct record checks (criminal history, credit, etc.) - remember that whether to conduct a certain check should be determined by the risks of the position, not the particular

- applicant; and
- an authorization to check references (it is worthwhile to obtain permission from every applicant to check references, and it is required under the Fair Credit Reporting Act if your nonprofit uses a third-party agency to conduct reference checks).

You indicated that your application form contains an at-will employment disclaimer. This is important because a former employee may claim that a promise of job security was contained or implied in the application. Including the "at-will employment" disclaimer on the application, as well as other documents such as the hire letter and Employee Handbook is a sound risk management practice.

You indicated that your application form features a truth clause. This is a good risk management practice that should be continued. Remember, however, that like other policies, this policy should be strictly enforced.

Consent to Conduct a Background Check

You indicated that your application form requests the applicant's permission to conduct specific background checks, such as credit, motor vehicle or criminal history background checks. These background checks can be useful screening tools if used to supplement fundamental screening tools such as applications, interviews, and reference checks.

Remember that checking official agency records on applicants for a position must be justified by a legitimate, job-related purpose. If that purpose exists, it is good risk management practice to include a disclosure/consent form as part of the application process. If your nonprofit uses a third party to conduct criminal history background checks, such as an investigative firm, you are required to obtain written permission prior to conducting the checks under the Fair Credit Reporting Act.

Interview Guide

The reason why an interview guide or script is so important is that prudent employment practices require that every candidate for a particular position be asked the same questions during interviews. By using a script or guide, the interviewer can be sure that the same questions are asked of all those interviewed. Remember to train all staff who are responsible for conducting interviews so that they are each aware of what questions not to ask and how to handle candidates with obvious or disclosed disabilities.

Many nonprofit managers wonder what questions are impermissible in job interviews with candidates. Twenty-three states have published guidelines for "pre-employment inquiries" which set forth examples of the questions which may and may not be asked in that state. The Fair Employment Practices Agencies of the following states have published such guidelines: Arizona, California, Colorado, Delaware, Idaho, Indiana, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New York, Ohio, Rhode Island, South Dakota, Utah, Washington, West Virginia, and Wisconsin. Copies of these guidelines can be obtained directly from the state agencies.

Interview Appraisal Forms

You indicated that your nonprofit does not use an interview appraisal form or similar document. An interview appraisal form is essentially a worksheet that lists the questions that will be asked to each interviewee and provides a rating instrument or format to enable the interviewer's objective assessment of the applicant. We recommend that you consider developing a form for use in future interviews.

An appropriate appraisal form provides structure for the interviewer's comments and helps the

interviewer ensure that he or she obtains comparable information on each interviewee. An interview appraisal form can also help interviewers stay on track with the questions they intend to ask and avoid asking any prohibited questions. The form should remind interviewers about limiting comments to job-related issues, and never writing any personal or subjective impressions on the form.

Reference Checks

Reference checks are among the most valuable screening tools at your disposal. Remember that if a candidate does not provide work-related references, you should press him or her to do so. If you discover a discrepancy between the information provided on an application and the information obtained from a reference, you should always investigate further. This investigation might include asking the candidate to clear up the discrepancy, calling additional references, or verifying credentials directly.

Pre-Employment Tests

Employers in the nonprofit, business and government sectors use a wide variety of pre-employment tests and background checks to obtain information about an applicant's suitability for particular positions. These screening tools are also used to verify factual information provided by an applicant.

The risks of these screening tools fall into two broad categories:

- inappropriate reliance on the information obtained through tests and background checks at the expense of more fundamental screening tools such as written applications, interviews and reference checks; and
- the inappropriate use or interpretation of test/background check results or the violation of an applicant's legal rights.

In the first category, the growing popularity of criminal history background checks as a screening tool for applicants in youth-serving organizations has led to the reliance on these checks as a barometer of suitability. Yet there is no question that these tests cannot be relied on to provide a "clean bill of health" for an applicant. Reliance on a "clean," state-based criminal history records check and discounting other screening tools is an unwise strategy.

In the second category of risk, many employers have rushed to use tests and background checks without first considering the legal limitations on the use of these screening tools or their appropriateness for a particular position. For example, it is unlikely that a credit check would be appropriate for the position of playground supervisor. Before using such tests and background checks, you must determine:

- what if any federal, state and local laws apply to restrict, limit or prohibit the use of these tools;
- whether the potential benefits outweigh the negative affect of the use of tests (for example, one negative effect might be that the use of background checks discourages applicants from a particular group);
- whether the proposed tests or checks offer truly reliable, job-related information;
- how the test/background check results will be evaluated. For example, will certain scores or findings disqualify an applicant? The failure to identify the criteria that will be used to evaluate results in advance increases the likelihood that the process will be a waste of precious resources;
- whether the proposed tests or background checks are clearly job-related and necessary to the thorough screening of applicants for a particular position.

Remember that few, if any tests or background checks are appropriate for every position in an organization.

Using a Hiring Checklist

The reason why a hiring checklist is so important is to ensure that every candidate is subjected to the same level of scrutiny during the screening process. This not only helps guard against charges of discrimination, but provides a procedure so that elements of the screening process do not fall through the cracks. For example, after investigating an allegation of client abuse, a nonprofit discovers that the one employee for whom the nonprofit failed to get a criminal records check had a history of criminal abuse. Hiring checklists help allow the nonprofit to see at a glance if one step in the process has not been completed.

Offer Letters

A written offer letter is a practical way in which to confirm details about an offer of employment. It is a risky practice to convey an offer of employment orally. Starting an employment relationship on the right foot requires a shared understanding of the basic terms of employment. A properly worded written offer letter will reduce the likelihood of a subsequent misunderstanding about basic terms of employment. It also provides an opportunity for an employer to obtain a prospective employee's acknowledgement of the terms of employment. An offer letter may increase the risk of a subsequent employment-related claim, however, if it is worded inappropriately or if it contains promises or commitments the employer is unwilling to live up to.

We recommend that you consider using written offer letters.

You indicated that your offer letters do not contain information about any of the following: probationary period, annual salary, salary review date, eligibility for benefits, duration of employment, potential for advancement, or job rights. While you may have reduced the risk that information contained in an offer letter contravenes established employment policies, the value of an offer letter without any of this information is questionable. Consider asking an employment lawyer to review your offer letters and comment on the advisability of including pertinent details.

Probationary Period

You indicated that new employees serve an initial probationary period. Review your policy to make certain that successful completion of the probationary period does not ensure job security or in any way conflict with your employment-at-will policy. Make certain that you have defined the purpose of the probationary period in your written policies, noting that completion of the probationary period does not increase an employee's rights in a job. Consider using language such as:

"A probationary period is a training and get-acquainted period, completion of which does not guarantee continued employment. Following completion of this period, you still may resign and the organization has the right to terminate your employment at any time, with or without cause."

Rejecting Applicants

All applicants who are considered by your organization but not hired, should be informed of the reason for the rejection. Being truthful is a fundamental tenet of effective and legal employment practices. Applicants should never be given a false reason for rejection. This can lead to costly litigation. Make certain that your decision not to hire an individual is consistent with the reasons contained in your hiring records, and that the reasons and documentation are free from discriminatory bias.

Employee Orientation

You indicated that you have an orientation program for new employees. This is a good risk management strategy, and may help ensure that all new hires receive the same, thorough orientation to the nonprofit's policies. From a legal perspective, a formal orientation program where policies are explained provides a defense to a claim that an employee was not informed about a specific policy. But providing an orientation with out-of-date, incomplete or inaccurate materials may be more risky than never conducting one in the first place. Review your orientation format and procedures to make certain that all policies distributed and explained to new hires are current.

You indicated that you maintain up-to-date personnel files for each employee. This is an excellent risk management practice.

Filing Immigration-Related Documents

You indicated that information related to your employees' nationality and immigration-related information is kept in a file that is separate from employee personnel files. It is prudent to maintain a separate file for copies of employment authorizations and INS forms (such as the I-9), required by the Immigration Reform Control Act of 1986. Copies of the documents used to verify identity and eligibility for employment should be filed with the completed I-9 forms. The reason for keeping these forms separate from personnel files and medical information is purely pragmatic. If the INS conducts an investigation of your nonprofit, federal agents may appear in your office and demand to inspect your INS files. If this happens to you, it will be far better to be able to turn over a discrete file containing all your workforce authorizations, rather than allow the investigators to pour through your personnel files.

You indicated that you conduct annual performance reviews for each employee. This practice is essential to (1) put employees on notice of unsatisfactory performance, and (2) articulate in an objective manner the goals and objectives for the employee's performance. In this way, employees are aware of their shortcomings and the nonprofit is in a strong position to support a discharge for poor performance. The practice of conducting regular, objective performance appraisals will also ensure that your organization is able to defend itself against charges of discriminatory employment practices.

A growing number of cases have reached the courts in which inadequate or nonexistent performance appraisals were the principal determining factor in a judgment for damages against an employer. Typically the litigation is brought by someone fired or denied a promotion, who then claims to be the victim of race, sex or age discrimination. The employer defends itself by claiming that the plaintiff simply wasn't doing his or her job. The plaintiff easily rebuts the employer's case by showing that his performance appraisals never mentioned any concerns or disappointments with performance. Employers that can present strong performance appraisal documentation are in a good position to defend their actions, whereas those that do not have written support for their position most often face liability. Consequently, evaluating the performance of staff and documenting the process carefully is "where the rubber meets the road" in employment-related risk management. Most often if there is a smoking gun in an employment action, performance appraisals (or the lack thereof) are the weapons of choice.

Evaluating performance is sound management and critical for the long-term health and prosperity of the nonprofit. In most cases the nonprofit's staff members are among the organization's most valuable assets. Staff influence the public's perception of the nonprofit, provide services to clients, and may be responsible for the welfare of vulnerable individuals on a daily basis. When staff can see how their own work successfully supports the achievement of the nonprofit's goals, a more effective organization will result.

If you are not already doing so, consider adding the review of performance appraisals by an administrator one tier above the actual supervisory relationship. This review can expose subjective

comments or inconsistent rankings. The objective review is also an opportunity to evaluate how well the supervisors are conducting their roles as job coaches. In order for the objective third-party review to be effective, you need to work out a schedule for annual or six-month reviews which permits an extra period of time for the objective reviews. The objective reviews should occur prior to the employee's receipt of the formal review, in order to allow time in the event the reviewer challenges what is written and the appraisal needs to be revised.

Third-Party Review

The best insurance against any pitfall in the performance appraisal process is an objective review by an administrator one tier above the actual supervisory relationship. This review can expose subjective comments or inconsistent rankings. The objective review is also an opportunity to evaluate how well supervisors are performing as job coaches. Remember that objective reviews should occur prior to the employee's receipt of the formal review, in order to allow time in the event the reviewer challenges what is written and the appraisal needs to be revised.

Training Supervisors to Conduct Reviews

You indicated that you currently train or coach supervisors on the implementation of your performance review system. This is an excellent practice that should be continued.

Consider reviewing your training or coaching program to make certain it addresses the following issues:

- The common reluctance to provide a candid review. Suggest strategies for communicating "bad news" in a respectful fashion and explain that an individual who is unable to convey bad news or impose discipline on an employee risks disqualification from supervisory status.
- The importance of providing ongoing feedback. Inform supervisors that they should never wait until the annual review to communicate dissatisfaction with an employee's performance. They should also remember to document any performance counseling sessions, making certain that these reports are signed by the employee and retained in the personnel file. The supervisor's notes - if not signed - may be disputed.
- The legal significance and importance of candid reviews. Written performance reviews are an organization's best evidence of whether an employee is meeting, surpassing or failing to meet the organization's expectations. Someone who is unwilling or unable to provide candid reviews of performance should not be allowed to continue in a supervisory capacity. The notion that a favorable review will motivate improved performance is untrue. Explaining to an employee why his or her performance falls short of the nonprofit's expectations remains the best strategy to motivating improvement.

Multi-Source Assessments

The newest trend in performance evaluations is a multi-source assessment, also known as the "360 degree" evaluation. In this system each employee's performance is assessed by several, rather than only one, appraiser. Typically the supervisor reviews the subordinate, who may also be reviewed by the employee himself, and by clients, peers and vendors. In turn, the supervisees provide comments on their supervisors' performance. Usually the data on each supervisor is collected anonymously and bypasses the supervisor, going directly to the supervisor's supervisor for evaluation, in order to provide insurance against real, or perceived, retaliation.

As supervisors and subordinates become more comfortable with the process, supervisors can directly review feedback from their own subordinates. While the potential for helpful information using a

multi-source appraisal system is great, there can be problems with the credibility of the feedback if staff are cynical and concerned that the feedback is an opportunity for retribution against an unpopular supervisor. Alternately, such a system could be seen as an opportunity for "deal-making: "I'll give you a favorable rating if you give me one...". In theory, the idea of a multi-source system is supposed to provide the highest level of management with a good sense of the effectiveness of the organization's supervisory staff. In practice, collecting such data as part of the formal appraisal system may not yield the most reliable results. Nonprofits must first have a culture of trust and honesty in order for 360-degree evaluations to be taken seriously. Many nonprofits find that facilitating roundtable discussions with staff about effective supervision and in extreme cases, arranging an internal arbitration between supervisors and supervisees is as effective as a formal system of multi-source evaluations.

Merit Raises

You indicated that employees at your organization are not eligible for merit raises - salary increases based on performance. Many nonprofits continue to award cost-of-living or COLA increases only, however, the clear trend is to provide merit-based pay raises. There are two major downsides to awarding flat COLA increases. Morale can be negatively affected when employees who are strong receive the same salary adjustment as employees who are less skilled, or less committed to the nonprofit. Second, when employees who are under-performing receive an automatic raise, simply because everyone received the same adjustment, there is a risk that the employee will assume that his performance is satisfactory. More risky still is the fact that juries will make the same assumption, which will undermine an employer's defense that an employee was terminated for poor performance.

A merit raise system provides an incentive for employees to improve performance. It also rewards strong performers, helping with the nonprofit's ability to retain the most effective employees. A common way to structure a merit raise system is to create a salary scale which assigns a certain percentage or range of percentages for salary increases in each of several categories. The categories correspond to the rating system on the performance appraisal instrument. Each employee is eligible for whatever percentage raise is appropriate given the range for the rating assigned to that employee. For example, "Unacceptable" would merit no increase. "Meets expectations" would merit a 1-3% increase, "Exceeds expectations" would earn a 3.5%-4.5% increase, and "Greatly exceeds expectations" would be awarded a 5%+ increase. In this way, the CEO, finance or personnel committee can determine the budget for salary and compensation for the coming year by looking at historic data on the number of employees in each salary and performance range.

Disqualified Persons

After several national scandals during the 1990s involving high salaries and perks received by nonprofit executives, the IRS revised its regulations on nonprofit compensation, specifically designing new rules to penalize nonprofits and board members when excessive compensation is given to disqualified persons (those who have exerted substantial influence on the nonprofit during the past five years - typically board members, employees, and major donors). Such illegal conduct, called "self-dealing," "private benefit," "excess compensation," or "private inurement," can result in the loss of a nonprofit's tax-exempt status or severe monetary penalties (up to \$10,000) against the nonprofit as well as those board members who approved the excess benefit transaction. An excess benefit transaction is any transaction in which a 501(c)(3) or 501(c)(4) organization provides an economic benefit to a disqualified person of greater value than what the nonprofit receives from that person.

IRS Guidance on Avoiding Excessive Compensation

The IRS regulations provide guidance on how nonprofits can avoid a finding by the IRS that the

compensation is an improper transaction. These regulations were enacted as part of the Taxpayer Bill of Rights 2 (1996), Internal Revenue Code Section 4958.

A compensation arrangement will be presumed to be valid as long as the nonprofit can show that:

- the arrangement was approved by the nonprofit's board or a committee of the board composed entirely of individuals who do not have a conflict of interest with respect to the transaction,
- the board or a committee of the board obtained and relied on appropriate comparative salary data prior to making its decision, and
- the board or committee adequately documented the basis for its decision at the time it was made.

Documenting Compensation Decisions

Intermediate Sanctions regulations and the call for greater accountability on the part of nonprofits make it critically important that every nonprofit board document the basis for its decisions about salary levels or adjustments for senior nonprofit managers. The board of directors should devote at least one meeting per year to evaluate and approve top managers' compensation packages. The minutes of the board meeting should reflect that comparative compensation data was used. The names of the board members who voted for approval should be listed in the minutes.

Classifying Employees

It is helpful to identify whether a worker is entitled to overtime or not in advance so that employees will not be under the impression that working longer hours will result in additional compensation. The Department of Labor frequently targets nonprofit employers for audits and discovers that exempt workers, who have been required to work long hours, were improperly classified and are really non-exempt. This results in the nonprofit having to pay back taxes as well as overtime. Consequently, it should be every nonprofit's goal to clarify and maintain the status of its exempt workers. Congratulations on your efforts to date to do so.

In order to maintain an employee's exempt status under the federal Fair Labor Standards Act (FLSA) and state laws it is important to make sure that:

- No deductions are taken from an exempt employee's pay for less than a full day of work. (Otherwise the government considers the worker to be hourly, rather than salaried, which is a requirement for "exempt" employees.)
- In general, any compensation provided to the exempt worker, such as a bonus, should not be calculated based on hours worked.

Progressive Discipline Policy

You indicated that you *do not* have a Progressive Discipline policy. Progressive disciplinary procedures are those requiring that the first instance of a performance failure be treated as a warning, with successive occurrences resulting in more serious disciplinary measures. The goal of progressive discipline is to formally communicate problem issues to employees in a direct and timely manner, so that the employee may improve his or her performance. The first warning in a progressive disciplinary system is the equivalent of notice to the employee of a performance failing.

Progressive discipline is usually a series of three warnings - three strikes and you're out. The disciplinary progression goes like this: first offense = verbal warning (which is documented); second offense = written warning; third offense = final written warning or suspension pending discharge.

In general, only gross misconduct and serious violations of the nonprofit's policies justify skipping the first warning phases of progressive discipline and imposing more serious discipline in the first instance. The progression of disciplinary steps set forth in the nonprofit's Employee Handbook should be followed whenever possible, unless starting with a verbal warning would be illogical, as in a situation where an employee brings a weapon to work.

Progressive discipline, if consistently applied and with flexibility for unusual cases, can be an effective risk management tool because it affords some assurance of fundamental fairness. The downside of progressive disciplinary policies is that they can create contractual obligations. If not carefully drafted, in most states policy language can be binding on the nonprofit under the theory of implied contract. Another downside of progressive discipline is that because the policy lists disciplinary steps in a certain order, the nonprofit's flexibility to select appropriate disciplinary action on a case-by-case basis can be greatly reduced. Even with language that states that the disciplinary policy is not a contract, employees will expect to be treated as described in the policy, so fundamental fairness dictates that the progressive disciplinary procedures be followed unless the employee is given notice otherwise. "Taking the high road" in employment practices requires an employer to live up to its promises, and employees regard policies as promises.

Despite the risk of breach of contract claims, use of progressive discipline is a positive and prudent practice for every nonprofit to embrace because it meets the obligations of fundamental fairness by giving employees notice about their performance failures and the disciplinary consequences. We caution that progressive discipline policies should be carefully drafted and reviewed by an employment lawyer to ensure that the nonprofit will not be needlessly vulnerable to claims of breach of contract. In order to give the nonprofit the most flexibility, it is advisable to draft progressive discipline policies as guidelines, rather than set procedures to be followed in all cases.

Opportunity to Correct Deficiencies

It is prudent to provide an opportunity for employees to correct deficiencies before you take adverse action against them. We urge you to continue this practice.

Third Party Review Prior to Termination

We urge you to continue the practice of having a person other than the affected employee's supervisor review the written record before an employee is terminated. This practice enables the organization to make certain that the action taken is supported in the written record, legally defensible, and consistent with action taken towards other employees.

Employment Practices Liability Insurance

You indicated that you purchase a separate EPLI policy to insure the risk of an employment practices suit. This is rare among small nonprofits but increasingly common among larger organizations with substantial employment practices risk. Many organizations choose to do so out of concern that a sublimit for EPLI under a D & O policy or a concurrent limit for EPLI may not be adequate, or a large employment claim may deplete the D & O limit. Others purchase separate EPLI coverage in order to ensure more comprehensive coverage. If you are concerned that you may be paying too much for separate EPLI coverage, contact your insurance agent, broker or advisor and ask him or her to explore the possibility of a D & O policy with a separate limit for employment coverage. You may be able to obtain comparable coverage for less than you are currently spending for your D & O and EPLI policies.

Legal Review of Employment Practices Coverage

You indicated that you or an attorney reviewed your employment practices liability insurance coverage within the past year. The careful review of policy language on a periodic basis is an important step in ensuring that your coverage is adequate. Many nonprofits discover too late that the coverage they first purchased five years ago is no longer adequate. In some cases an organization has grown to a size that warrants higher limits of liability. In other cases, a relatively old policy form specifically excludes an area of employment practices where the nonprofit faces considerable risk, such as sexual harassment.

Coverage for Administrative Complaints

You indicated that your EPLI coverage will provide a defense for an administrative complaint. Many nonprofit insurance buyers view defense coverage for administrative claims to be a valuable part of their employment practices coverage. Every year, hundreds of nonprofit employers are called before local human relations boards or the federal EEOC and required to account for and defend their employment practices. A policy that promises a legal defense for these hearings may give the nonprofit the best chance of prevailing in the long-term. It also provides peace of mind to have an experienced employment attorney at your side when you're facing a hearing panel. When an employer prevails at the initial hearing stage, it may dissuade a would-be plaintiff from filing suit. Or at least make it more difficult for him to find a plaintiff's attorney to take his case to court. Some insurance companies look at these non-monetary "claims" on a case-by-case basis and decide to defend them only if the insurance company views the defense as in its best interest. Other companies specifically enumerate the commitment to defend these claims in the policy. Look at your policy's definition of "claim" to determine whether your policy ensures coverage for administrative claims.

Employment Contracts

At some point in time an employee, generally at the senior level, may request a contract, or it may appear wise to hire a CEO subject to a contract of employment. The nonprofit should use its own legal counsel to review a contract on behalf of the organization that is proposed by the CEO.

Consultants and independent contractors should always be hired subject to a contract that clarifies not only the terms of the assignment. Contracts for independent workers should also make it clear that the independent worker is not an employee of the nonprofit, the worker has full responsibility for his or her own taxes, and he or she is not covered as an employee for benefits purposes. Do not assume that because you've hired someone under a contract that they are a consultant. They may still be an employee. Consult the prior section on independent contractors for additional information on this important topic.

Narrative Versus Multiple Choice Ratings

Some experts believe that the most insightful appraisal format is pure narrative because supervisors are then forced to describe the employee's performance and can't make the mistake of checking a box that doesn't apply. However, narrative responses are also legally risky because a supervisor's comments might go off on a tangent that is irrelevant and subjective, or fails to support the rest of the appraisal. Or supervisors may put the nonprofit at risk by writing observations about performance that are not job-related and therefore inherently inappropriate. Most appraisal forms feature a combination of narrative and rating questions. Often there is a summary statement or rating which is useful when a distinction based on performance is required between similarly situated employees.

Performance appraisal software and human resources consultants are available to help customize appraisal forms. Customization is recommended over simply borrowing a format from another workplace. However, many nonprofits successfully borrow forms developed for another organization,

and then customize those forms as they discover what works and what doesn't.

Remember that a senior manager or the executive director should review completed appraisal forms before they are shared with an employee. The purpose of this review is to make certain that the review does not contain inappropriate information or anything that is inconsistent with the organization's policies. For example, a statement on a review indicating, "I'd like to see Mary retire from this organization" could contravene the nonprofit's employment-at-will policy.

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Communications Risk

Photo Releases

You indicated that your CAA does not obtain signed releases from participants or the parents/guardians of participants prior to taking or using photographs of participants for publicity, marketing or other purposes. It is a good idea to ALWAYS obtain signed releases prior to taking and using photos of your clients.

A photo release is a simple document that grants permission for your club to take and use photos of a participant. For example, a photo release for a young participant it might look something like this:

I, _____, hereby grant permission for the Community Action Program of Anytown to take photos of my child, _____, and use those photos on the agency website, social media site, newsletter and other promotional or informational materials. In consideration of the opportunity afforded my child to participate, I agree that my child, my assignees, heirs, guardians, and legal representatives, will not make a claim against the agency, or any of its affiliated organizations related to the use of photos of my child. I further consent to the unrestricted use by the agency and/or person(s) authorized by the agency of any photographs, recordings, interviews, videotapes, motion pictures, or similar visual recording of my child.

Social Media Policy

You indicated that your CAA has not adopted a policy concerning Social Media use or provided training on the application of the policy.

Keep in mind that social media sites can be used as tools for expressing support OR dissatisfaction with the organization. Consider adopting a policy that provides some guidance to volunteers, such as:

- If you mention the agency in your postings on social media sites, please do not suggest that you are representing the views of official positions of the agency.
- When talking about your experience as a volunteer, please recognize that your comments could be misconstrued by people who aren't familiar with our agency.
- If you have questions about whether it is appropriate to mention your CAA involvement in any social media post, please speak with your supervisor.
- Keep in mind that we have an obligation to guard the privacy of our participants. Never mention young participants by name or post pictures of young people unless you are certain that we have obtained the express, written permission of the young person's parent to use or post their image or name.

If you're uncertain about what to include in a Social Media policy for your agency, consider forming a task force to brainstorm and develop a custom-fit, well-suited policy.

Service Delivery Risks

Family Development Program Risks

You indicated that your Family Development team hasn't identified the specific risks that arise in their area of responsibility or developed targeted risk management responses to those risks.

To remedy this situation:

- Before brainstorming risks the team should decide on a definition of "risk." There is no single way to define risks. Three types are common: cause, event or impact. For consistency's sake decide whether the team will focus on **causes** (e.g., client needs emergency help that can't be provided by CAA), **events** (e.g., volunteer loans client money to pay for food), or **impacts** (e.g., volunteer resigns after feeling pressured to continue providing funds to client).
- After identifying top risks arising from family development programs, rank the risks. The risks whose occurrence would be costly or otherwise impactful to the agency should be listed as priority risks.
- Brainstorm possible measures to either: (1) reduce the likelihood of the risk; (2) reduce the severity/cost of the risk; or (3) respond if the risk materializes.
- Select the strategies that the team believes are the best approaches to (1), (2), and (3) as long as those strategies are practical.
- Assign responsibility for each strategy (a staff lead for coordinating the activity), and indicate a timetable for completion (e.g., by December 31 we will update and re-distribute our policies about providing personal help to clients).
- Decide how often the team will revisit and update its list of risks and strategies.

Housing Program Risks

You indicated that your Housing program team hasn't identified the specific risks that arise in their area of responsibility or developed targeted risk management responses to those risks.

To remedy this situation:

- Add the topic of "identifying top risks" to an upcoming agenda of the Housing team.
- Before brainstorming risks the team should decide on a definition of "risk." There is no single way to define risks. Three types are common: cause, event or impact. For consistency's sake decide whether the team will focus on causes (e.g., non-custodial parent seeks access to child residing at domestic violence shelter), events (e.g., non-custodial parent locates shelter where child is residing and attempts to abduct child), or impacts (e.g., client sues CAA for failing to provide adequate protection for her child).
- After identifying top risks arising from family development programs, rank the risks. The risks whose occurrence would be costly or otherwise impactful to the agency should be listed as priority risks.
- Brainstorm possible measures to either: (1) reduce the likelihood of the risk; (2) reduce the severity/cost of the risk; or (3) respond if the risk materializes.
- Select the strategies that the team believes are the best approaches to (1), (2), and (3) as long as those strategies are practical.
- Assign responsibility for each strategy (a staff lead for coordinating the activity), and indicate a timetable for completion (e.g., by December 31 we will update our security policies intended to

keep the location of the shelter unpublished).

- Invite a manager or team outside the Housing programs area to review the team's risks and strategies and provide feedback.
- Decide how often the team will revisit and update its list of risks and strategies.

Training and Education Risks

You indicated that your Training & Education team hasn't identified the specific risks that arise in their area of responsibility or developed targeted risk management responses to those risks.

To remedy this situation:

- Before brainstorming risks the team should decide on a definition of "risk." There is no single way to define risks. Three types are common: cause, event or impact. For consistency's sake decide whether the team will focus on **causes** (e.g., client needs training that CAA is unable to provide), **events** (e.g., client trained by CAA obtains job under false pretenses), or **impacts** (e.g., CAA's name and reputation are tarnished among prospective employers of CAA trainees).
- After identifying top risks arising from training and development programs, rank the risks. The risks whose occurrence would be costly or otherwise impactful to the agency should be listed as priority risks.
- Brainstorm possible measures to either: (1) reduce the likelihood of the risk; (2) reduce the severity/cost of the risk; or (3) respond if the risk materializes.
- Select the strategies that the team believes are the best approaches to (1), (2), and (3) as long as those strategies are practical.
- Assign responsibility for each strategy (a staff lead for coordinating the activity), and indicate a timetable for completion (e.g., by December 31 we will update and re-distribute our policies).
- Decide how often the team will revisit and update its list of risks and strategies.

Protecting Vulnerable Populations

Every nonprofit offering services to children, dependent adults, individuals with disabilities and the elderly should take reasonable steps to protect its clients from foreseeable harm. The risk management tools available to a nonprofit must be evaluated and considered in light of practical, financial, and other considerations.

You indicated that your organization has guidelines that govern the behavior of employees and volunteers while in contact with service recipients. This is an important risk management practice. Written guidelines remove some of the ambiguity concerning appropriate and inappropriate actions. Consider reviewing your guidelines to make certain that they are clear and unequivocal.

Explicit Prohibitions Against Sexual Conduct

You indicated that your organization's guidelines make it clear that any behavior that is sexual in nature -- or that could be interpreted as sexual in nature -- is not permitted. While many organizations assume that such common sense guidance would not be needed, some have discovered that failure to be explicit concerning sexual behaviors has resulted in service recipients being victimized and some organizations subjected to lawsuits. This has been especially true in some programs for adolescents in which staff members may be close in age to the residents of the facility.

You indicated that your organization's guidelines *specifically prohibit* exposing service recipients to pornographic videos and magazines or to sexually oriented Web sites. There should never be a reason for staff members to expose service recipients to sexually explicit material. Children should not be exposed to these materials and while adult service recipients can make their own decisions, those decisions should not be related to any services rendered by an organization or its staff. Too often, exposure to sexually explicit materials is a prelude to sexual molestation or sexual harassment.

Hugging and Other Non-Sexual Contact

You indicated that your organization's guidelines do not specify that, when a hug is appropriate, it should be given from the side, over the shoulders - and not from the front. Hugging and other forms of non-sexual contact are important to the nurturing of most individuals. When hugging is a full frontal embrace, there is a possibility that it will be misinterpreted in a sexualized context. Staff should be admonished to respect the boundaries that are set by clientele and if any resistance to physical contact is sensed, they should refrain from such contact.

Prohibition on Fraternization

You indicated that your organization doesn't prohibit fraternization (formation of social relationships) between staff members and service recipients. Fraternization between staff members and service recipients is a primary category of boundary violation. It confuses the distinctions between staff roles and peer relationships.

Staff Responses to Inappropriate Client Behavior

Staff members must know that it is their responsibility to set the boundaries when service recipients attempt to engage staff or other participants in inappropriate activities. You indicated that you have a policy that instructs staff about how they should respond when a service recipient attempts to initiate inappropriate contact.

Consider reviewing your policy to make sure that it instructs the staff to: confront the service recipient at the first sign of inappropriate behavior, identify the offensive behavior, explain that it is inappropriate, and request the service recipient to stop the behavior and not repeat it. Staff members should be directed to report all incidents to their supervisors. It is possible that service recipients may be attempting the same kind of boundary violations with other staff members and reporting it ensures that a consistent response is given. Repeat episodes should result in increased sanctions, including suspending the service recipient from the program.

Ensuring Adequate Staffing

Adequate staffing of all your organization's services is critical to the effective control of risks of personal injury and harm. Having a minimum of two adults (such as two staff members or a staff member and a parent) accompany all trips and outings helps to ensure that the opportunity for sexual abuse is minimized. Organizations in which one-to-one relationships are important should examine other risk reduction options.

You indicated that your organization has a policy that establishes a required minimum ratio of staff/volunteers or parents to number of service recipients, depending on the nature of the activity and the requirements of participants for assistance. Adequate staffing is a key component of conducting safe activities and also provides protection for the staff and volunteers from false allegations of inappropriate conduct.

Protecting Client Privacy

You indicated that your organization has a written privacy policy that protects service recipients. Having a policy concerning client privacy is an important first step. It is also important to make sure that all staff members - employees and volunteers - understand the policy and are aware of their responsibility to use information about service recipients only as required by the organization for the delivery of its services.

Preventing the Release of Sensitive Information

Service recipients expect that organizations offering them services will not release information about their association with the organization unless the organization received permission from them. By having a policy that provides a reasonable safeguard against the release of sensitive information, you are upholding an important trust.

Guidelines for Coeducational Activities

You indicated that your organization does not have written policies and guidelines pertaining to coeducational activities. Conducting coeducational activities places responsibilities on the organization to establish a standard for appropriate behavior that protects the privacy of the service recipients as well as ensures their safety. Once the standard of behavior is determined, it should be communicated to participants in the specified activities.

You should consider involving staff of both sexes in supervising coeducational activities for older children and adults. This ensures that service recipients who require assistance with toileting or other kinds of personal help can have it without unduly compromising their privacy.

Organizations that sponsor overnight coeducational activities have a legal responsibility to supervise the activities to ensure the safety and privacy of the service recipients. Requiring separate sleeping

accommodations for males and females helps to fulfill this responsibility. Even at slumber parties and campouts, separate areas may be designated for male and female participants.

Prohibitions Against Violence

Violence cannot and should not be condoned by any organization. Organizations, however, must realize that developmental differences and emotional problems of some service recipients will require use of a variety of responses to violence, which may range from reprimands to denial of services. Just as in any disciplinary process, the organization must be fair and consistent.

Frequently, the use of violence is due to frustration -- the feeling that no other options are available. By offering nonviolent opportunities for conflict resolution and stressing the importance of using them, organizations can lessen the frustrations that service recipients might otherwise experience and thereby avoid violence.

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Nonviolent Conflict Resolution Options

Resorting to violence may be due to frustration -- the feeling that no other options are available. By offering opportunities for nonviolent conflict resolution and stressing the importance of using them, your organization has taken an important step to lessen the level of frustrations that individuals may otherwise experience and thereby avoid violence.

Awareness of Criminal and Gang-Related Activities

Many nonprofits offer services in neighborhoods in which there are high crime rates, drug markets and gang activity. For some organizations, achieving their mission requires a presence in high crime neighborhoods. If this is the case for your organization, *becoming aware of the nature of the crime problems and the gangs operating in the area can help to reduce the threats to the safety of your staff and service recipients.*

Disciplinary Policies

You indicated that your organization does not have written policies governing discipline and/or control techniques that address misbehavior by service recipients. Written policies addressing discipline and control of service recipients are extremely important risk management tools.

The use of physical punishment to control vulnerable service recipients is not acceptable and may expose the organization to considerable liability. Organizations should develop more appropriate disciplinary techniques; for example, for young children time in the "time out corner" may be an appropriate response to an infraction of the rules. A guideline used by some childcare programs is to limit the amount of time to one minute for each year of the child's age. For older service recipients, withholding privileges or even denial of service may be appropriate sanctions for serious misconduct.

An administrative review process before disciplinary action is taken can prevent unfair and angry

reactions by staff members against service recipients. One technique some organizations use is to require supervisory sign-off before initiating the discipline. Obviously, for small children and in situations in which safety is an issue, discipline must be immediate, but should be reported to supervisory personnel.

The involvement of peers in adjudicating and deciding punishment for rules violators may be a constructive activity if the ground rules are clearly understood. Any punishment decided by a peer review panel should be constructive, related to the behavior that should be changed, and above all be non-violent. Subjecting service recipients to belt-lines, "whacks" with a paddle, or supervised fighting is not appropriate and could lead to serious liabilities for the organization.

Withholding food and liquids from service recipients as a punishment is never advisable.

According to the Food and Drug Administration, "Restraints should not be used unless necessary or when in the individual's best interests. Patients can be injured if they are not adequately monitored over long periods while they are restrained. In fact, if restraints are being used to avoid monitoring patients, then they are being misused. If a restraint is used for too long, and the patient is unable to move, various health problems can occur, including decubitus ulcers, nerve damage, and incontinence. Sensory deprivation can cause psychological problems. Overall mental and physical decline can also occur. Patients in physical restraints need extra monitoring, not less."

Corporal Punishment

You answered that your policies prohibit the use of any form of corporal punishment. *The use of physical punishment to control vulnerable service recipients is not acceptable and may expose an organization to considerable liability.*

Review of Disciplinary Actions

You answered that you have a review process for disciplinary actions to ensure fair treatment of service recipients. *An administrative review process before disciplinary action is taken can prevent unfair and angry reactions by service recipients against staff.* Your current practice reduces the risk that service recipients will respond inappropriately to discipline.

Case Manager Review of Mentoring Relationships

You answered that your organization requires case managers to contact mentors and mentees on a frequent basis. Many mentoring organizations require a minimum number of contacts with their mentors and mentees to offer an opportunity to discuss any problems that may arise in the mentoring relationship including inappropriate conduct by either party. Remember that these contacts should be documented and a report of the contact placed in the organization's files.

Encouraging Participants to Report Questions or Concerns

Since one-to-one relationships offer considerable opportunity for unscrupulous individuals to attempt inappropriate conduct - sexual molestation, thievery, extortion - *organizations need to take steps to empower mentees and their families to report suspicions of such conduct to the organization for investigation and possible intervention by a law enforcement agency.*

Use of Public Places for Team Meetings

Inappropriate conduct, particularly that of a sexual nature, is more difficult to initiate in a public place. Therefore, requiring that meetings of mentors and mentees take place in a public place still permits the one-to-one relationship to form, but prevents overt sexual behavior. It is not a panacea, but lowers the risk in a somewhat riskier kind of social service delivery mechanism. We urge you to consider requiring, for at least the first six months of the mentor-mentee relationship, that participants meet only in public places.

Activity Selection Policies

You indicated that your organization has policies that guide the selection of activities offered by your organization. You have taken an important step in managing the risks which result from the kinds of activities you sponsor.

Ensuring That Programs and Services Support the Mission of an Organization

An organization should only place the safety of their service recipients at risk to the degree necessary to accomplish its mission. You indicated that the programs and services offered by your organization are evaluated in terms of their relationship to the mission of your organization. This is an excellent practice that reduces the likelihood that service recipients will be needlessly exposed to risk.

Offering Appropriate Activities

You indicated that the activities and programs offered by your organization are assessed for their appropriateness for the ages and abilities of the intended participants or service recipients. This is an excellent practice. Keep in mind that appropriateness may be measured in the context of the mental, physical, and emotional requirements for the program.

Identifying Client Medical Conditions

You indicated that your organization does not have policies and procedures for identifying service recipients' medical conditions that may limit participation in your organization's program. Many organizations that offer services to vulnerable clientele require either the service recipients or one of their family members to complete a medical history form. Information typically collected includes information about chronic conditions such as respiratory or cardiac problems, allergies, contagious diseases, immunizations and other relevant medical facts. Most organizations also obtain the name of the individual's physician or primary care provider and his or her telephone number.

When service recipients' medical histories indicate that participating in your organization's programs might inflict harm on the service recipient, it is prudent to seek professional guidance before placing individuals in potentially life-threatening circumstances. Some individuals may be denied the opportunity to participate based upon their medical histories. Other individuals may need to have their activities restricted. Further, and above all else, the staff members in charge of the activities need to be informed of the risks and the appropriate responses if any of the risks materialize.

Requiring a Medical Clearance

You indicated that you require a medical clearance before accepting an individual into a program that might require physical exertion or exposure to substances that could cause an allergic reaction. As a reminder, remember that the staff members in charge of the activities need to be informed of the risks and the appropriate responses if any of the risks become realities.

Ensuring the Confidentiality of Medical Information

A policy intended to ensure the confidential handling of medical information obtained from service recipients is an excellent risk management strategy that protects your nonprofit as well as your clients. This policy should be continued and adherence to the policy monitored carefully.

Instructing Trip Leaders

You indicated that you require or provide instruction for leaders of trips and outings concerning the appropriate steps in emergency situations such as medical emergencies, automobile collisions, fatalities, or injuries. Often tragedies can be averted when prompt action is taken. When leaders of an organization's activities know how to respond in the face of an emergency, precious moments can be saved in obtaining the required assistance. While every organization should take reasonable steps to prevent injuries and other kinds of emergencies, every nonprofit and its staff members should be prepared to respond when necessary.

Obtaining Emergency Medical Care

Planning for activities should include the possibility that one or more participants may be injured. Individuals in charge of activities need to know how to respond when a service recipient is injured. Congratulations on your policy of providing instructions to key personnel about obtaining emergency medical care.

Prompt Reporting of Injuries

You indicated that your emergency procedures require staff to promptly report incidents that result in injuries to participants. This is an excellent practice. Reporting incidents involving injuries to participants enables the organization to mobilize its resources to assist the injured parties and their families. It also enables the organization to be prepared for any media attention that the incident generates.

Communicating During an Emergency

In many respects the availability of cellular communications has facilitated ready access to emergency services when a crisis looms. Cell phones are not a total answer, however, as cellular service may not be available in some areas in which your organization conducts its programs. Even when cellular service is available, batteries go dead and equipment may malfunction. In widespread emergencies, circuits may become overloaded. For these reasons, additional options should be considered.

Guidelines for Media Relations

You indicated that your organization does not have written guidelines governing contact between staff members and media representatives. Both to protect the privacy of service recipients and to ensure the accuracy of information provided by your organization to the media, the designation of an organizational spokesperson is a good practice. Your organization's spokesperson(s) should be trained to effectively represent the organization. This position demands skill in communicating essential information in "sound bites," training in making the organization's position clear even when confronted by a potentially adversarial interviewer, and the ability to protect service recipients from inappropriate intrusion.

Guidelines Governing Access to Facilities and Clients

You indicated that your organization requires visitors to report to a central check-in point. A sign-in procedure for visitors enables the organization to identify individuals who visit your location and determine if they have a legitimate reason for visiting by asking them whom they are visiting and the purpose of their visit.

Visitor Tags

The use of visitor tags enables staff members to extend courtesies and assistance to visitors as well as to monitor their activities. If visitors require escorts and do not have them, a staff member can offer to show them where they are going. If someone is wandering around a facility used by the organization for delivering services, the staff can send them to check-in properly. The safety of vulnerable clients may require establishing reasonable controls on the access of visitors to service recipients.

Physical Barriers to Control Access

You indicated that your organization employs physical barriers in order to control access to its facilities. Physical barriers can lessen the opportunity for unauthorized persons to gain access to your facilities and clients. Please note: do not create safety hazards by inappropriately locking fire/emergency exits in such a manner as to prevent evacuation in emergency situations. Also, never install or leave bars on windows unless the appropriate panic hardware is also installed.

Locking Unused Rooms

You answered that your organization does not have policies and procedures to ensure that areas that are not being used for service delivery are secured and locked. *Unused rooms, if left unlocked, offer opportunities for service recipients to enter the rooms, be isolated from others, and be victimized.* When the facilities used by your organization for service delivery have areas not used for your program, the areas should be kept locked. If your organization uses facilities not under its control, for example, a school gymnasium or a church meeting hall, when the arrangements are made to use these facilities, your organization should encourage the administrators of the facilities to take steps that would limit the access your service recipients would have to vacant classrooms and other spaces in the facilities.

Inspecting Facilities and Equipment

You responded that your organization requires periodic inspections of facilities and equipment used in conjunction with the services you offer. Inspecting program areas is an important risk management tool for identifying hazardous conditions before they injure a program participant.

Checklists

You indicated that your organization uses checklists for its inspections. Remember to keep your signed and dated checklists on file as documentation that scheduled inspections were performed.

Inspecting Equipment

You indicated that your organization requires regular safety inspections of your equipment. This is an excellent practice. Safety inspections ensure that equipment used by your organization is in safe operating condition and does not constitute a hazard when used for its intended purpose.

Making Your Expectations Clear

Managers and board members of some nonprofits feel that an explicit statement prohibiting sexual acts with service recipients is unnecessary because no one in their right mind would consider such relationships to be proper. Unfortunately, the prevalence of inappropriate sexual conduct involving staff members and vulnerable service recipients gives rise to the need to clearly state what should be obvious. By making these statements during the screening process, individuals who are seeking a position with your organization in order to gain access to sexual opportunities will be on notice that the organization does not and will not tolerate such behaviors.

Applicants also need to know the organization's guidelines for discipline and control. If an applicant appears to be unwilling -- or unable -- to adapt to the organization's guidelines for exercising control over service recipients, the organization would be well advised not to place the applicant in a position that requires supervising activities for service recipients.

Some organizations serving vulnerable populations have incorporated a written statement of expected behavior into their staff selection and screening process. If an applicant is unwilling to sign the statement of behavioral expectations, the organization rejects the application.

Addressing Discipline and Control During the Screening Process

You indicated that the issues of discipline and control are not discussed with applicants during your selection and screening process. *When an organization works with vulnerable clients, it should explore the issue of how applicants would exercise control over clients.* Applicants also need to know the organization's guidelines for discipline and control. If the applicant appears to be unwilling -- or unable -- to adapt to the organization's guidelines for exercising control over service recipients, the organization would be well advised not to place the applicant in a position that requires supervising activities for service recipients.

Position Descriptions for All Staff

You indicated that you do not use a basic screening process for all volunteer positions. All staff members should go through a reasonable screening process based upon their specific responsibilities. A basic screening process includes written applications, interviews and personal reference checks. The screening process should provide the basis for a mutual understanding of the nature of the position and expectations of both the organization and applicant. If the basic screening process discloses potential problem areas, the applicant should not be accepted until the issues presented are resolved.

Some organizations that use large numbers of volunteers experiment with various strategies to streamline their selection process. For example, some organizations accept resumes in lieu of applications. In some cases, resumes may not provide the type of information the organization needs to determine suitability for placement or compare information on each applicant for a position. Other organizations interview a large group of applicants at one time. Interviewing applicants one-on-one in most cases is preferred to interviewing a group of applicants at one time.

Reference checks are an important screening tool. It is rarely if ever appropriate to omit reference checks in a screening process. Personal references are those identified by the applicant and should be individuals that know the applicant well. When checking personal references, the organization should inquire as to the nature of the relationship and the length of time it has existed. Inquiries should be open-ended questions. For example, asking, "How long have you known the applicant?" rather than, "The applicant says that you have known him for 15 years. Is that correct?"

If your organization uses such shortcuts, be aware of the risks and understand that other risk reduction

strategies -- such as increased supervision -- may be required to compensate for shortcomings in your screening process.

Use of a Rigorous Process for High Risk Positions

When screening applicants for positions, the screening process should be based, in part, upon the risks inherent in the position. The greater the risk, the more extensive the screening process should be. In addition to the basic application process that includes a written application, interviews and reference checks, organizations have several options for more extensive screening. These options include record checks and additional reference checks.

The most common types of criminal history record checks are state-based checks and federal (FBI) record checks. Generally, checking both state and federal criminal history databases involves two separate processes. A criminal history record check is part of a screening process -- not a selection criterion. Before incorporating criminal history record checks into their screening processes, organizations should establish screening criteria: clear guidelines stating which offenses are relevant; what offenses will disqualify an applicant; what, if any, other factors will be considered; and how the rights of the applicant will be preserved.

When establishing screening criteria, organizations must take into account state and local laws and regulations. Some jurisdictions have instituted screening or licensing requirements for individuals who have substantial contact with children or other vulnerable individuals (dependent elderly or individuals with disabilities). Make certain you determine if licensing or regulatory agencies have identified specific offenses that would disqualify applicants for some assignments.

For positions that require substantial direct contact with children or other vulnerable populations, personal safety concerns are paramount. Therefore, the focal points of criminal history record checks for these individuals are crimes against persons.

Youth-serving organizations generally agree that individuals should be permanently disqualified from holding positions that require substantial contact with children if their criminal records include any of the following:

- Past history of sexual abuse of children.
- Conviction for any crime in which children were involved.
- History of any violence or sexually exploitive behavior.

Sex offender registries offer an inexpensive alternative for obtaining criminal history record information when other criminal history records are unavailable. Many states have put their sex offender registries on-line so that anyone with access to the Internet can check them. An advantage to sex offender registries is the requirement that sex offenders register when they move from state to state so that a conviction from another state could be recorded on the registry for the state in which the sex offender currently resides.

If your organization offers (or arranges) transportation services to vulnerable clientele, it may incur significant liability exposures in addition to the potential for injury to vulnerable service recipients. Ensuring that your drivers do not have a record of unsafe driving is fairly easy as most states offer access to drivers' records for organizations having a need for the information. The cost ranges from \$2.00 to \$10.00 for each driving record. Some insurance companies will perform the checks as a service to their insureds. Some insurance companies require DMV checks of each driver the organization seeks to insure as a prerequisite for insurance coverage.

Unfortunately, some people try to pass themselves off as someone they are not. For this reason, it pays to verify credentials that are required for particular positions. For example, if a position requires an individual to have a license for counseling, the organization should contact the appropriate licensing authority and verify that the individual holds a current license. If an individual needs to have a graduate degree, the organization should contact the educational institution from which he or she indicated a graduate degree was awarded. Always inform applicants for both employment and volunteer opportunities that information they provide on the application will be verified and misrepresentations or omissions may be cause for immediate rejection as an applicant or termination from employment if hired.

Use of Criminal History Record Checks

The most common types of criminal history record checks are state-based checks and federal (FBI) record checks. Generally, checking both state and federal criminal history databases involves two separate processes. State-level criminal history record checks will only reveal convictions for crimes that occurred in the state being checked. If you do not conduct a federal criminal history record check you may miss offenses committed in other states.

Verifying Required Credentials

When specific credentials -- degrees, licenses, or certificates -- are required for holding a position, your organization is wise to verify that applicants possess the applicable credentials. According to human resources experts, more than a third of all resumes contain material misstatements.

Orienting New Staff

You indicated that your organization provides an orientation session for new staff members. This practice is an important tool for reducing the risk that staff members will behave inappropriately toward clients, or otherwise violate the organization's rules and procedures. An effective orientation provides a clear explanation of the organization's mission, policies, procedures and expectations, and affords an opportunity for participants to pose questions about specific circumstances.

Providing Information on Special Client Needs

If your organization offers services to service recipients who have mental retardation, physical disabilities, or are elderly and require assistance, new staff members need information concerning proper assistance techniques. For example, when assisting service recipients into and out of wheelchairs, they need to know how to set the brakes on the wheelchairs, how to place the footrests, where to hold the service recipient, and how to lift without injuring the service recipient or staff member.

Mandatory Reporting

You responded that you provide information about reporting procedures for suspected abuse of a service recipient during your orientation for new staff. *Vulnerable service recipients, both child and adult, may be targets for abuse.* Staff members need to know what abuse is, how to detect abuse, what actions to take when abuse of a service recipient is suspected, and what the staff member's legal responsibilities are.

Most states have laws requiring caregivers of vulnerable individuals to report suspected abuse to either a protective services agency in state or county government or to a law enforcement agency. Failure to report suspected abuse could result in both criminal and civil penalties.

You indicated that your nonprofit provides in-service training for staff who work with vulnerable populations. This is an excellent practice. Congratulations on your efforts to train staff members in order to maintain the quality of your programs and the safety of your service recipients.

Volunteer Handbooks

You indicated that your nonprofit does not have a volunteer handbook. Volunteer handbooks are useful tools that every organization should consider using. Volunteer handbooks may include several sections, including: a welcome letter, the organization's mission statement, a copy of the volunteer's position description, volunteers' standards of behavior, the organization's policies and procedures, an organizational chart indicating to whom the volunteer reports, and a description of the organization's disciplinary or grievance procedures.

A well-written and thorough volunteer handbook is a useful reference source when questions about the organization's policies and guidelines arise.

Transportation

This report contains recommendations on the subject of transportation risks. Vehicular accidents are one of the leading causes of injuries to nonprofit staff and volunteers and they are a common source of claims filed against nonprofit organizations. A surprisingly high percentage of these claims involve a single vehicle, such as backing into a post in a parking garage. Single vehicle accidents are most likely to occur when a driver is unfamiliar with a vehicle. Despite the large number of claims and common sense, nonprofits continue to send staff and volunteers on errands without first checking to make certain that the driver has a valid license and has experience driving the type of vehicle used by the organization. Other organizations operate with the mistaken impression that when a volunteer or employee drives his or her own vehicle, the nonprofit cannot be held liable for damage or injury caused by the driver.

The risk of a transportation claim exists whenever a car, truck, bus, or other vehicle is used on behalf of a nonprofit. Many accidents can be avoided through the adoption of policies and procedures concerning drivers, vehicles, and passengers. In some cases, risk can be transferred to or shared with a contract transportation provider. A transportation risk financing strategy that includes automobile coverage is a must for every nonprofit.

Understanding Your Transportation Exposure

You indicated that your organization provides or sponsors transportation services or owns (or leases) one or more vehicles. Transportation is the means for an organization to carry clients, volunteers, employees, goods, or equipment from one place to another. For many nonprofits, transportation services are an integral part of fulfilling the organization's charitable mission. For example, a nonprofit that delivers hot meals to shut-ins cannot operate without volunteers or employees driving either their own or agency vehicles. Many nonprofits that do not provide transportation services overlook their incidental transportation exposures. It is nearly impossible for a nonprofit to operate today and not have some form of transportation exposure. The risks may arise from "incidental driving" such as an employee or volunteer driving his or her own vehicle to attend meetings, or an agency function, or to run an errand to the bank, post office, or office supply store.

While every nonprofit has the possibility of a loss from an automobile claim, the level of risk increases when an organization's core business includes transporting people, materials, or equipment, or when an organization owns or leases vehicles. Therefore, your agency must be diligent in managing the risks associated with your transportation activities as well as the risks from incidental driving.

It is always prudent to consider whether your nonprofit's transportation activities are essential to achieving your core mission, or whether you can transfer or share the risk of loss by engaging a contract provider of transportation services.

You answered that your employees and/or volunteers rent, hire, or borrow vehicles to conduct your organization's business. These actions create the same exposures for your organization as your employees and volunteers using their own vehicles on behalf of the organization. Your organization can be held vicariously liable for the actions of your employees and volunteers while driving or operating a rented, hired, or borrowed vehicle.

As with non-owned vehicles, the insurance coverage follows the car in that the vehicle owner's insurance policy will pay first. If the owner has no insurance or the limits are inadequate to cover a severe loss, your organization may be expected to pay the difference. Therefore, it is important to

determine if the owner has insurance and for what limit. Many rental car companies insure their vehicles only to the level required by your state's financial responsibility law. The average limits are \$20,000 each person, \$40,000 each accident for bodily injury and \$10,000 for property damage. Your state's limits may be higher or lower. With today's medical costs and litigious society those limits may be inadequate to cover a severe accident.

Aside from appropriate insurance, your organization should consider having certain policies and practices for the use of these types of vehicles and their drivers. These policies can be part of your policies concerning other non-owned vehicles (employees' and volunteers' vehicles).

Written Transportation Policies

You indicated that your organization has some written transportation policies and procedures. This is an excellent practice. Written policies and procedures concerning transportation activities are essential for any organization that provides transportation services as a major part of its operations or owns any vehicles. However, all nonprofits, even those with minimal transportation exposures (no owned vehicles), should consider establishing a few basic written transportation policies and procedures.

If your nonprofit owns vehicles or provides transportation services, you should consider incorporating the following policies in your transportation program:

- *Transportation Risk Management Statement*- Every organization should have an organizational statement on its risk management philosophy regarding transportation. The most basic statement is that safety always comes first and is the number one priority within the organization. You can also include your basic driver safety rules, such as always wear seatbelts, lock car doors, no loud music, do not drive when tired or taking medication that impairs your abilities, etc.
- *Authorized Drivers and Use of Vehicles*- A policy that states who may and may not drive for the organization is an important risk management tool. This may include a requirement that employees and volunteers notify your organization if they are charged with any serious traffic violation. Occurrences may include reckless driving, driving under the influence or while intoxicated, or an at-fault accident. You can also state that your organization has the right to withdraw, at any time, its authorization of any employee or volunteer to drive on agency business. The policy should also address any limitations or restrictions on the use of agency-owned vehicles or the use of personal cars on agency business.
- *Passenger Responsibilities*- Guidelines that passengers must follow when being transported by agency personnel.
- *Accident and Incident Reporting*- Instructions on how to respond in the event of a motor vehicle accident and procedures for reporting an accident to your organization and, if appropriate, to your organization's insurance broker and insurance companies.
- *Driver Selection and Licensing*- Guidelines for your driver selection process for approving people to drive on behalf of the organization.
- *Driver Training and Supervision*- Proper training and supervision is critical to an effective transportation risk management program.
- *Vehicle Use*- This policy can provide greater detail on the authorized use of the agency's owned or leased vehicles including any use restrictions. You might also include authorized use of personal autos for the organization's business.
- *Vehicle Selection*- Guidelines for the purchase, leasing, rental or use of vehicles. The guidelines may restrict the use of certain types of vehicles or establish safety equipment criteria for agency vehicles.
- *Vehicle Maintenance*- A policy establishing the vehicle inspection and maintenance program.
- *Rental Vehicles*- Establish your policy for who can rent vehicles and what types of vehicles.

Specify what insurance, if any, should be purchased through the rental agreement, such as liability and physical damage coverage.

- *Borrowed Vehicles*- Similar to the policy for rental vehicles; however, there is generally no formal agreement between the vehicle owner and the borrower. Remember that the "insurance follows the vehicle" and if the vehicle is uninsured, your organization may be held responsible for any loss that occurs while your employee or volunteer is driving the vehicle.
- *Insurance Requirements* - For personnel using their own vehicles, the organization can establish minimum insurance requirements for personal auto insurance. The policy may also require that personnel provide proof of their own insurance annually and, if they are unable to provide proof, their authorization to drive will be revoked automatically. The policy might also address insurance requirements for contract transportation services and for agency-owned vehicles.

If you have only an incidental transportation exposure (occasional driving by employees and/or volunteers and no owned vehicles) you might consider including the following policies described above:

- Transportation Risk Management Statement
- Authorized Drivers and Use of Vehicles
- Passenger Responsibilities
- Accident and Incident Reporting
- Driver Selection and Authorization
- Rental Vehicles
- Borrowed Vehicles
- Insurance Requirements

Orienting New Staff

You indicated that you include your key transportation policies and procedures in your orientation session for new employees and volunteers. This is an excellent practice. Many organizations feel that just distributing a written policy or program is sufficient to put staff on notice. Experience proves the opposite. New staff members at even small organizations are often bombarded with information about the organization and their specific responsibilities. It is essential to provide new staff with time to read your transportation policies and ask questions. An orientation session also provides an opportunity to emphasize the organization's commitment to safety in all of its service delivery and programs. The feedback you receive during an orientation session may provide ideas for making the program more user-friendly.

Many organizations require their employees and volunteers to sign a form acknowledging that they agree to abide by the organization's policies. The form can also indicate if the person is authorized to drive on behalf of the organization. If you adopt this approach, maintain the signed form in the individual's "personnel" file and include proof of their personal auto insurance, if appropriate.

Transportation Risk Management Statement

You responded that your organization does not have a written transportation risk management statement. Although you do not have a written statement, organizational culture and common practices may imply your transportation risk management philosophy. However, it is always better for an organization to create written guidelines, rather than assume personnel understand your goals and priorities. Consider adopting a formal "safety first" philosophy for all of your organization's activities and services, not just for your transportation exposures.

The statement can also incorporate your basic driver safety rules. The rules may delineate desired

behavior, such as always wear seatbelts, lock car doors, and do not play loud music, or have other distractions. Other guidelines are to not drive when overly tired or taking medication that impairs your abilities, do not use cell phones while driving and so on.

Vehicle Use Policy

You indicated that you have a policy concerning the use of your organization's vehicles. This is an important risk management tool.

We recommend that you review your policy and consider making sure that it clarifies:

- Who is authorized to drive the agency's vehicles;
- Who is authorized to drive their own vehicles on behalf of the organization;
- The approved uses for the vehicles (transporting clients, materials and equipment, etc.);
- If employees, volunteers, or clients can use the vehicles for personal errands. If yes, the process for requesting and granting permission for personal use of the organization's vehicles;
- If members of the employee's or volunteer's family can drive the organization's vehicles;
- Whether your organization prohibits any uses such as transporting hazardous materials, carrying passengers in an open truck bed, participating in car rallies, or other activities;
- What driving restrictions apply, such as limited night driving, limits on the number of hours someone may drive in one day, or the requirement that drivers take periodic rest breaks.

Passenger Behavior Policy

Most people have witnessed drivers coping with mild to severe passenger distractions. From heated arguments with "back seat drivers" to imposing discipline on children or other passengers within the vehicle, passenger distractions are accidents waiting to happen.

You indicated that you have a policy concerning passenger behavior. This is an important component of a comprehensive transportation program. All passengers transported by your paid and volunteer staff should be required to use basic safety equipment such as seatbelts, child safety seats, and wheelchair tie-downs as needed. Passengers should also adhere to minimum safety procedures, such as not causing distractions to the driver of the vehicle, remaining seated, not playing loud music, and no horseplay while in the vehicle. Drivers and other passengers should be required to report all violations of these rules to the appropriate personnel. The organization should consider taking action with respect to passengers who repeatedly violate the organization's rules, such as suspending future transportation privileges. Passengers should also be encouraged to report any observed unsafe driving practices to the appropriate personnel.

Accident Reporting Procedures

Consider reviewing your guidelines to make sure that they:

- Stress the importance of reporting accidents to the organization as soon as practicably possible (after medical assistance has been rendered to victims).
- Clearly delineate the person to whom accidents should be reported.
- Emphasize that the organization's primary concern - and that of its drivers - is the health and well-being of the driver, passengers, the occupants of any other vehicles involved in the accident, and, if applicable, involved pedestrians or bystanders. Instruct the driver to stop at once and give aid to anyone injured in the accident and check for injuries. Drivers should also be told not to move occupants who appear to be seriously injured.

- Emphasize the importance of getting out of harm's way and protecting everyone after the accident. Many secondary accidents occur when drivers involved in a collision fail to pull over and get out of traffic lanes. A growing number of states are adopting fender-bender laws that require motorists involved in accidents to move their vehicles into breakdown lanes.
- Explain the importance of placing warning devices 200 to 300 feet behind the vehicle. Flares or markers should be placed so that traffic has enough warning to react and slow down.
- Instruct drivers and passengers involved in an accident to notify the police or highway patrol immediately, and also, to request a copy of the police accident report.
- Instruct drivers to collect additional information at the accident scene such as the license plate numbers of all involved vehicles, and the names, addresses, and driver's license numbers of all persons involved in the accident, including any witnesses. Require that an Accident Reporting Form be kept in the glove box of a vehicle at all times. Train all personnel in the proper completion and distribution of the form.
- Inform drivers and passengers that they may furnish the name and address of the insurance company that provides your organization's automobile liability insurance coverage to anyone involved in the accident who requests the information. They must also give the name of the organization's local insurance agent. This information should be accessible to all drivers, and may be stored in the glove compartment with blank accident forms. Most states require that every vehicle contain proof of insurance.
- Explain the importance of preserving evidence after a collision. Many organizations keep a disposable camera in their vehicles to use in taking pictures at the accident scene.
- Clarify the importance of avoiding a discussion with persons at the scene about who is to blame for the accident. Drivers should be instructed not to apologize or admit responsibility or guilt for the accident, but express concern without admitting liability.

Require an internal review following an accident to determine if the organization's policies and procedures were followed and if they were effective. Based upon the findings, revise any policies or procedures to more effectively respond to an automobile accident.

Potential Liability for Damages Caused by an Unpaid Driver

A nonprofit *can* be held liable for the negligent act of a volunteer whether the volunteer is driving an agency vehicle or his or her own auto on agency business. An organization can be held *directly* liable for actions that cause harm to another. The injured party might assert that the organization failed to screen and select its drivers properly. Another plaintiff might allege that a nonprofit failed to train or to supervise its drivers and other personnel.

A second form of liability is *vicarious* liability where the actions of an organization's agents are transferred to the nonprofit. Vicarious liability becomes important when a nonprofit has employees or volunteers driving their cars or other vehicles not owned by the nonprofit on agency business. Under the theory of vicarious liability, a nonprofit could be responsible for the actions of its drivers and other personnel if three conditions are met. First, the driver or agent must be acting on behalf of the organization and with its authority. Second, the organization must have the right to control the driver's actions. Finally, the incident must have occurred while the driver was acting within the scope of his or her duties.

Driver Screening

Screening all drivers makes good sense. Since you are already screening your drivers, you know how important this step can be. However, an effective screening and selection process needs to be quite thorough. Some organizations are casual about screening and selecting their drivers, but if there's an

accident involving an "unqualified" driver, the organization's lax attitude toward screening may come back to haunt it.

The establishment of a driver selection process should be a part of your usual employee or volunteer screening program. As a rule of thumb, the greater the transportation exposure, the more extensive the driver screening process should be. First, you should review each employee and volunteer position description to determine if driving is a part of the position. The extent of the transportation exposure will vary by the position. You can view the exposures and appropriate selection process as a continuum. On one end of the continuum are the positions that do not involve any driving. At the other end of the continuum are the most hazardous positions that involve activities such as the use of buses and vans to transport people, handling special materials or equipment, transporting people with special needs such as wheelchair lift vans, or driving large, heavy vehicles. The middle section includes positions with less hazardous exposures such as transporting people in private passenger vehicles or more frequent driving as an essential function of the position that doesn't require any special licenses or training.

A basic screening process might include an application, personal interview, reference checks, verification that the applicant has a valid driver's license, and proof of personal auto insurance. Additional items that might be considered in a more rigorous process include: a statement of driving history, statement of medical condition, motor vehicle record, and a driving test.

A description of some of the tools available for driver screening and selection is provided below:

- *Position Application*- Collecting basic personal information and questions regarding the person's driving status.
- *Personal Interviews*- Having someone from your organization interview the applicant to determine their acceptability for the position. Consider requiring the applicant to bring their motor vehicle record (MVR) to the interview.
- *Reference Checks*- Contacting non-family references to determine the person's suitability for the position.
- *Valid Driver's License*- Confirm that the applicant has a valid driver's license and note any restrictions or limitations placed on their ability to drive (i.e., no night driving, special equipment, corrective lenses, etc.).
- *Statement of Driving History*- For the occasional driver, it may be acceptable to ask the applicant to complete a statement of driving history instead of ordering a copy of his or her motor vehicle record.
- *Proof of Personal Insurance*- If the person will be driving his own vehicle, your organization may want to require proof of personal automobile insurance with stipulated limits.
- *Motor Vehicle Records (MVR) Check*- You can obtain a copy of a person's motor vehicle record report from your state's Department of Motor Vehicles, or require the applicant to obtain it and bring it to you.
- *Special Licenses or Certifications*- Certain sizes and types of vehicles require special driver's licenses such as the Commercial Driver's License. In some jurisdictions drivers who transport persons with developmental disabilities must obtain a special certificate. Determine if there are any special requirements applicable to the types of vehicles your organization operates or the types of passengers served.
- *Statement of Medical Conditions*- Some organizations require their drivers to submit a statement of their medical condition that includes any medications the person is taking.
- *Driving Test*- You may want to work with your local police department to have applicants take an "on-the-road" driving test.
- *Physical Examination*- Some driving positions may require that the person receive a physical medical examination prior to operating the vehicle.
- *Drug and Alcohol Testing* - An organization may decide to implement a drug and alcohol testing

program for its drivers. Such a program is mandatory for any position that requires a Commercial Driver's License.

Additional screening tools are available, but this highlights the main methods used by nonprofit organizations.

Driver Applications and Supplements

If a person is recruited as a driver or driving constitutes an important or major aspect of the person's position, a specific Driver Application should be used in conjunction with your organization's usual employment or volunteer application. When driving is not a major job function then you can either incorporate driving questions into your standard applications or use a supplemental application.

For positions requiring extensive driving, a Driver Application should request:

- Name
- Address
- Telephone Number
- Date of Birth
- Driver's License Number and State of Issue
- Emergency Contact Name and Telephone
- Current Employer (name and address)
- Position Held
- Dates of Employment
- Reason for Leaving
- Special Certificates: e.g., CPR, Medical Certificate, Defensive Driving, First Aid (indicate certificate(s) and expiration dates)
- Accident Record for the Past Five Years - Consider asking the applicants to list the dates of accidents, describe the nature of each accident (e.g. head-on, rear-end). Also indicate whether the applicant was found to be at fault, and if there were any fatalities or injuries.
- Traffic Violations for the Past Five Years - Moving violations only, but include any cases where the applicant received "probation before judgment." Request the city and state of each violation, date of the violation, and infraction and penalty.
- Have you ever been denied a license, a permit, or the privilege to operate a motor vehicle?
- Has any license, permit, or privilege ever been suspended or revoked?
- Personal Insurance - Do you have an insurance policy for your personal vehicle that meets or exceeds the limits required by state law? If yes, provide the name of your insurance carrier and your policy number.
- Agreement to Abide by the Nonprofit's Policies - The application should include a statement indicating that the applicant has read and agrees to abide by the nonprofit's policies, including its driving policies, will attend any courses or training required by the nonprofit, and will inform the nonprofit of any moving violations or at-fault accidents that occur during the applicant's tenure as a volunteer or staff member, whether or not they occur while working for the nonprofit.
- Seatbelt Warranty - Some nonprofits add language about seatbelt use as a warranty at the bottom of the application. For example, "I also understand it is the policy of [Nonprofit] that all passengers and drivers must at all times wear seatbelts when riding in an organization vehicle. I agree to abide by this policy and will not transport a passenger who refuses to fasten or have his or her seatbelt fastened unless he or she is excused from this requirement by a physician's certificate."

- Truth Clause - Just above the applicant's signature should be a truth clause or false information warning. While there are many reasons for rejecting an applicant for a position at your nonprofit, dishonesty on the application is among the most defensible reasons for rejection. Every nonprofit application for volunteer or paid employment should include a truth clause. A sample is provided below:

"I certify that the answers given by me to all questions on this application and any attachments are, to the best of my knowledge and belief, true and correct and that I have not knowingly withheld any pertinent facts or circumstances. I understand that any omission or misrepresentation of fact in this application or on my resume may result in refusal of or separation from employment/volunteer service upon discovery thereof."

- Applicant's Signature, Date

For those positions with only incidental driving, the driving supplement might include the following:

- Driver's License Number and State of Issue
- Personal Insurance - Do you have an insurance policy for your personal vehicle that meets or exceeds the limits required by state law? If yes, provide the name of your insurance carrier and your policy number.
- Special Certificates - e.g., CPR, Medical Certificate, Defensive Driving, First Aid. Indicate certificate(s) and expiration dates.
- Accident Record for the Past Five Years - Ask the applicant to list the dates of accidents, describe the nature of each accident (e.g. head-on, rear-end), indicate whether the applicant was found to be at fault, and indicate if there were fatalities or injuries.
- Traffic Violations for the Past Five Years (moving violations only, include even if received "probation before judgment") - Request the city and state of each violation, date of the violation, and infraction and penalty.
- Agreement to Abide by the Nonprofit's Policies.

Verifying Licenses

By making certain that all authorized drivers of the organization's vehicles have current, valid drivers' licenses, you are performing a very simple, but important, task. Make sure that each driver is legally licensed to drive the type of vehicle to be used and that no license restrictions affect the person's ability to perform his or her duties. Always make a copy of the license for your files.

It is also a good practice to check for valid driver's licenses for all employees or volunteers that might drive occasionally for the organization. This includes employees and volunteers that use their own vehicles, not just the people driving the organization's vehicles.

You might also consider checking drivers' records through your state Department of Motor Vehicles. Some nonprofits require applicants for volunteer positions to produce a copy of their current Motor Vehicle Record (MVR), while other organizations obtain the applicant's permission to check their motor vehicle records and do so later.

MVR Checks

Driving records are maintained by the Department of Motor Vehicles (DMV) in each state to record each person's traffic violations and vehicle accidents. Like other tools, however, you need to use the information gathered properly to achieve your desired results. Checking official agency records is *not* a panacea. *Do not be lulled into a false sense of security.* Conducting a motor vehicle record check is not a

substitute for using other screening tools or risk reduction techniques such as closely supervising personnel (employees and volunteers) and monitoring their performance after placement. Moreover, conducting a record check should not lead you to disregard danger signs that appear during other parts of the screening process.

Here's a suggested approach for checking motor vehicle records:

Step 1 - Determine if the position involves driving

The decision to check official agency records - including motor vehicle records - should be based primarily upon the specific responsibilities of the position. If operating a motor vehicle is not part of the position description, then why check driving records?

Step 2 - Decide if an MVR check is necessary

Decide which positions require that each person's MVR needs to be checked. Consider checking the MVRs of persons authorized to drive your nonprofit's vehicles. Remember, it may still be a good idea to check a driver's MVR, even when they will be driving their own vehicle. If the position involves only incidental driving, then you may want to consider using a Statement of Driving History as a screening tool.

Some proponents of record checks assert that a check encourages self-screening. They believe that individuals with disqualifying records will be discouraged from applying for driving positions. Using official records as a screening tool may also strengthen your position in litigation. Although the organization is responsible if its driver is at fault (negligent) it can avoid possible allegations of gross negligence by showing that it took proper care in screening its drivers. An organization with access to these records may be subject to criticism if it fails to use it especially if the information is readily accessible and affordable. Both of these reasons for using record checks may be valid. However, every nonprofit must balance its selection of screening tools against the factors of relevance to the position, availability, usefulness, cost, and legal permissibility.

Step 3 - Establish criteria

Before ordering motor vehicle records on applicants, you must first carefully define your selection criteria that will enable your organization to function while following its policies and procedures on a consistent basis. The selection process should identify traffic violations or accidents that will disqualify someone automatically, establish rating criteria, define judgment factors, and permit the information to be examined in the context of organizational requirements and other life experience factors of the applicants.

For example, what motor vehicle offenses would automatically disqualify an applicant? Would an applicant with a recent moving violation be automatically disqualified? Would an applicant with a moving violation five years ago be disqualified automatically? What was the nature of the moving violation - speeding, running a stop sign or red light or driving under the influence? We suggest starting with a list of offenses that would automatically disqualify any applicant, e.g. any arrest or conviction for driving under the influence or driving while intoxicated, vehicular manslaughter, or reckless driving. Then develop more specific criteria: e.g. two moving violations in the past 5 years, for disqualifying an applicant.

Step 4 - Obtain MVR checks on all applicants for designated positions

If you decide that MVR checks are necessary for specific positions, you should obtain motor vehicle

records for all candidates for those positions. Consistency is a key issue in any effective screening and selection process. The failure to conduct record checks on all candidates for a position may be viewed as discriminatory. In addition, it may be hard to explain if your organization placed a person not screened in accordance with your policies in such a position and that person caused an injury or perpetrated a crime.

Step 5 - Provide applicants with disqualifying offenses an opportunity to respond

Unfortunately states can make errors in recording traffic violations. It is a good risk management practice to allow applicants with disqualifying offenses to confirm if the information is correct. If the information is incorrect, the applicant should have the opportunity to "correct the record."

At a minimum, all of your drivers should have an acceptable driving record as defined by your organization. Your insurance company and agent or broker can assist you in establishing effective guidelines. Remember that checking motor vehicle records must be an on-going process. Depending upon the extent of driving exposure, the MVRs can be reviewed annually. Also be prepared to take the appropriate action if a volunteer or employee develops an unacceptable driving record while working or volunteering for your organization.

NOTE: Under Federal law anyone driving a vehicle that holds sixteen or more people (fifteen passengers and the driver), such as vans or buses, must have a valid Commercial Driver's License (CDL). The law also requires the driver of any vehicle over 26,000 pounds to have a Commercial Driver's License. Many states have adopted more stringent requirements for Commercial Driver's Licenses. For example, California requires that anyone driving a vehicle holding ten (10) passengers, including the driver, have a Commercial Driver's License (Class "B" License). Check with your state Department of Motor Vehicles or your insurance agent to determine your state's requirements.

The U.S. Department of Transportation's CDL regulations require prospective employers to check, within thirty days of the date the driver's employment begins, the motor vehicle records for the applicant's driving history. The organization must also conduct an investigation of the driver's employment record for the past three years.

Driver Training

You indicated that you do not provide driver training for paid and volunteer staff. We suggest that you consider training anyone who drives on your behalf. Training drivers is a good idea, especially if they are required to drive an agency-owned vehicle with which they might not be familiar. Make sure that all of your drivers know how to safely operate whatever vehicle they will drive. Insist that seat belts be worn at all times and that safety seats are available for small children.

You might even consider putting together a driver's handbook that states your policies and expectations clearly. The training program, like the selection process, should be developed based upon the nature and extent of the driving performed for each position. Not everyone needs to be trained to the same level unless they are performing the same tasks.

Having a new driver work with a more seasoned driver is an excellent method of training.

Here is an overview of training topics to consider including in a driver training program.

New Employee/Volunteer Orientation

- General overview of your transportation policies and procedures

- Transportation risk management statement including your organization's general driving rules
- Authorized drivers and vehicle use
- Mileage reimbursement policy
- Accident procedures

Position Specific Issues

- Any skill requirements or special training or licenses (first aid, CPR, special driver's license, etc.)
- Training on driving certain types of vehicles (i.e., panel trucks, large passenger vans, trucks, or buses). Custom design a training program for lift operation, wheelchair tie-downs, radio procedures, or any other special function that your drivers may be asked to perform.
- Defensive driving and other driver training programs
- Passenger assistance
- Vehicle inspection and maintenance procedures including documentation
- Use of trip logs
- Supervision - Chain of command
- Transportation safety program - incentive awards, safety meetings, safety committee, review of transportation issues/problems

Supervising Drivers

You indicated that you have someone responsible for overseeing your paid and volunteer drivers. Having a supervisor for driving activities is an important first step in managing transportation risks in your nonprofit. Make certain that this person has the authority to enforce the policies adopted by your organization. Also ensure that the supervisor is well versed on your transportation policies and procedures and can articulate them to all drivers in the program.

Monitoring Driver Performance

Monitoring driver performance on an ongoing basis is another effective risk management tool. The proper supervision of drivers requires continuous performance monitoring and evaluation. You indicated that you do evaluate your drivers. This is an important practice that we encourage you to continue. Consider reviewing your process for drivers of agency vehicles to include the applicable following elements:

- Periodic review of each driver's motor vehicle record
- Periodic road test
- Confirmation of medical condition if applicable
- Written driver safety tests
- Review of accident and incident reports
- Regular performance reviews and conferences
- Review of complaint logs
- Review of transportation program logs and reports (inspections, maintenance reports, trip logs, etc.)
- Verification of position requirements - current and valid driver's license, certificates or special licenses, and personal automobile insurance

Commercial Driver's License Issues

Under federal law, the drivers of vehicles holding 16 or more passengers (including the driver) or weighing more than 26,000 pounds must have a Commercial Driver's License (CDL). Aside from the

need for a CDL, your organization is subject to numerous Federal and state regulations. The U.S. Department of Transportation's CDL regulations require prospective employers to check, within thirty days of the date the driver's employment begins, the motor vehicle records for the applicant's driving history. The organization must also conduct an investigation of the driver's employment record for the past three years. For additional information on the regulatory requirements, contact the U.S. Department of Transportation (www.dot.gov) or your state Department of Motor Vehicles.

Owned or Leased Vehicles

You indicated that your organization owns or leases one or more vehicles. Your organization either provides transportation for your clients or has enough employee or volunteer travel to have its own vehicles.

No matter what type of vehicles you own - private passenger cars, buses, trucks or vans or some combination - your organization is responsible not only for who drives the vehicles but their maintenance and upkeep. Every nonprofit that owns vehicles should have policies and procedures in place to manage the risks of owning and operating motor vehicles.

Vehicle Selection Policy

You indicated that you have a vehicle selection and replacement policy. The following are some factors to consider in evaluating the adequacy of your policy:

- Do you have specific criteria for selecting the type of vehicle(s) your organization needs to fulfill its mission - private passenger cars, minivans, vans, different types of trucks, or buses? If you require buses, what passenger size is needed?
- Does the criteria include the type of safety equipment that must be installed such as airbags, side impact features, anti-lock brakes, four-wheel or all-wheel drive, head restraints, large side mirrors, backup alarms and mirrors, cargo holders and any special mechanical equipment such as lifts?
- How often will you replace your vehicles?
- Is replacement dependent upon the vehicles' age, mileage or obsolescence?

Trip Logs

You indicated that you maintain trip logs for your vehicles. These logs can assist you in evaluating the need for and effectiveness of the various vehicles your organization owns. The logs also can reinforce to personnel that they are driving an agency owned vehicle and that their actions have a direct effect on the organization.

Inspections

You indicated that your nonprofit requires pre- and post-trip inspections of your vehicles. Some auto accidents are due to mechanical problems and poorly maintained vehicles. Spending a few minutes inspecting a vehicle before and after a trip can save time, money and energy later.

Documenting Vehicle Maintenance

Ensuring proper maintenance and repairs is one of the primary reasons for the pre- and post-trip inspections. However, if a driver does not know how to inspect or how to report problems, the inspection procedures are meaningless. You indicated that your organization has established procedures including documentation for routine and special maintenance. This indicates that you recognize the

critical connection between safe equipment and a safe transportation program.

Controlling the Non-Owned Auto Exposure

You indicated that your organization does not have an approval process for hiring, renting or borrowing vehicles. An approval process enables your organization to maintain control over its transportation exposures. The process does not have to create a bureaucracy or impose undue burdens on personnel. However, your staff should have some guidance on your policy for renting, hiring and borrowing vehicles. An effective policy can include the following:

- *Authorization*- Identify those positions that have the authority to rent, hire or borrow a vehicle and how other employees or volunteers can receive approval.
- *Acceptable Activities*- List the types of activities or reasons that are acceptable for renting or borrowing a vehicle.
- *Authorized Drivers*- The section should follow your acceptable driver policy. No one that has not been approved to drive either your vehicles or on your behalf should be allowed to drive a rented, hired or borrowed vehicle.
- *Acceptable Vehicles*- List the types of vehicles that can be rented or borrowed. Consider your organization's insurance coverage, especially for physical damage to rented or borrowed vehicles. In some cases it may be prudent to purchase the collision damage coverage, while in other cases this coverage may not be needed.
- *Cost Limitations or Factors*- Provide guidance on the price range for rental vehicles. Some organizations have special arrangements with specific rental car firms and require that personnel use these companies.
- *Vehicle Inspections*- Your personnel should be instructed to conduct pre- and post-trip inspections of a rented, hired or borrowed vehicle. They should report any noted physical damage or other problems to the vehicle's owner prior to operating the vehicle. The post-trip inspection can verify that the vehicle suffered no damage when being used by your organization. Use the same inspection process if your organization loans vehicles to others.
- *Borrowed Vehicles' Insurance*- Establish a process for verifying that the owner of the borrowed vehicle has adequate auto insurance (liability and physical damage).
- *Your Insurance* - The policy should briefly explain your organization's insurance coverage (if any) for rented, hired, or borrowed vehicles. Your coverage may consist of Hired and Non-owned Auto coverage for the liability exposures and Hired Auto Physical Damage. Your nonprofit can purchase both of these coverages, whether or not you own any vehicles. Also explain any requirements that your insurance company has imposed before you rent or borrow a vehicle.

You indicated that your organization does not contract with transportation service providers such as limousine services, bus or shuttle services, or trucking firms that haul your equipment or materials.

Understanding Business Auto Coverage

You indicated that you do have automobile liability coverage. Frequently, nonprofits only purchase automobile liability insurance when they own a vehicle since they assume their transportation exposure is limited to losses involving owned vehicles. However, your organization can be responsible for losses arising from someone driving their own vehicle on agency business. Therefore, virtually every nonprofit needs Hired and Non-owned Auto coverage.

The standard Business Automobile Policy (BAP) provides coverage for auto liability which is your

liability arising from the ownership, maintenance, and use of a motor vehicle within the course of the organization's business. The key to the policy's liability coverage is the symbol used to denote which vehicles are covered. "Symbol 1" provides the broadest coverage. It includes "any auto" that the insured owns, hires (rents and borrows), and any non-owned vehicles. If your organization does not own any vehicles, you should ask for Symbols 8 (Hired Autos) and 9 (Non-owned Autos). If your organization owns any vehicles, it should consider coverage for Personal Injury Protection (no fault), Auto Medical Payments, and Uninsured and Underinsured Motorists. If your nonprofit hires or rents any autos it should also consider purchasing Hired Auto Physical Damage.

Each nonprofit has its own special needs for auto insurance, therefore it is important to discuss your transportation exposures with your insurance advisor (typically a broker, agent or consultant). This is particularly important if any aspect of your driving exposures has changed recently.

Physical Damage Coverage

You answered that your organization has auto physical damage coverage. Most likely you own vehicles and insure them for physical damage. However, it is possible to also purchase physical damage coverage for Hired Autos. If your organization rents cars on a regular basis, you should consider purchasing Hired Auto Physical Damage coverage. Hired Auto Physical Damage coverage is provided by an endorsement and coverage may vary between insurance companies so review this coverage with your insurance professional. Another consideration is that if your organization only occasionally rents cars, it may be more cost effective to purchase this coverage from the rental agency. When renting cars, many people and organizations rely on the protection offered by credit cards or their personal auto policy for rental car coverage. If your organization takes this approach, be very careful. Many credit card agreements are very restrictive and provide limited coverage. Also, your personal auto policy may not respond if the car is rented for agency business. Discuss this with your insurance advisor to determine the best course of action for your organization.

Garage Exposure

You indicated that your organization either has a garage operation for your vehicles or a program that involves working on other people's cars. Due to these operations, your organization should have a garage policy. A garage liability policy covers not only the liability from driving or using motor vehicles but also the operations involved in running a garage. A garage has some exposures similar to an office in that someone can slip and fall in the garage area. Other risks that are somewhat unique to a garage include the possibility of leaking automotive fluids causing a pollution problem, or liability from fixing a car incorrectly. A business auto policy does not cover these types of losses but a garage policy would.

Another possible exposure is the legal liability you may assume when storing or parking other people's vehicles. If your organization operates a parking garage you should consider purchasing Garage Keepers Legal Liability policy.

Due to the complexity of garage and garage keepers operations and insurance policies, coupled with the liability you may assume when you perform repairs on yours or others' vehicles, we urge you to discuss your specific circumstances and needs with an insurance professional.

Vehicle Donation Programs

You indicated that your organization does not have a vehicle donation program. If you decide to begin a program in the future, you should discuss the program with your insurance professional to evaluate your specific circumstances and insurance needs.

Cargo Insurance

You indicated that you transport cargo either in your own vehicles or through transportation companies. If you also have cargo insurance for these goods - well done! Few nonprofits recognize their potential exposure to loss from transporting goods and materials. Many organizations assume that a transportation company will assume responsibility. However, a company's liability for your cargo is usually very limited. Also, some larger nonprofits have their own trucks and tractor-trailers that they use to haul materials. No auto policy covers the cargo carried by, within or on the vehicle. For this exposure you need an inland marine policy.

Special Endorsements

While a Business Auto Policy is somewhat standard, many insurance companies provide broader coverages through various endorsements. Some of the coverages to consider are as follows:

- *Employees as Insureds*- Employees are insureds when driving company-owned vehicles, but the coverage does not include employees when they are driving their own vehicles. You can extend coverage by endorsing the Who Is An Insured provision to include employees for hired and non-owned vehicles.
- *Volunteers as Insureds*- Volunteers are usually not included within the Who Is An Insured provision. However, many insurance companies will add volunteers as insureds if your organization wants to extend its coverage accordingly.
- *Fellow Employee Exclusion*- The standard auto policy contains an exclusion for injuries involving two or more employees such as an employee that is a passenger in a car driven by another employee. The original purpose of this exclusion is that the employees' injuries should be covered by workers compensation. However, there may be times that the injuries are not covered by workers compensation and the employees will file a claim under the auto policy. In a competitive insurance marketplace, many insurance companies are willing to delete the "fellow employee" exclusion.
- *Drive Other Car Coverage*- If you have an employee whose only vehicle is the agency owned vehicle, you need Drive Other Car Coverage. This coverage protects the employee and his or her spouse if they have an accident while driving someone else's car.
- *Broad Insured*- Some policies extend the Insured Provisions to include newly formed or acquired organizations (subject to some limitations and conditions).
- *Loss Reporting Provisions*- Some policies require that losses known by "any insured" must be reported promptly. However, if your policy includes employees and volunteers as insureds the definition of any insured is quite broad for claim reporting purposes. Ask the insurance company to limit the reporting requirement to executive officers and an insurance manager.
- *Mental Anguish*- Some policies add mental anguish to the definition of bodily injury.
- *Lease Gap Coverage*- If you long-term lease any vehicles consider purchasing Lease Gap Coverage. In the event of a total loss, the insurance company will pay the value of the auto plus the additional legal obligation to the lessor for the difference between the actual cash value of the vehicle and the outstanding balance of the lease.
- *Airbag Coverage* - If your vehicles contain airbags, check to see if the insurance company will or will not apply the mechanical breakdown exclusion to the accidental discharge of an airbag.

Breadth of Coverage

You indicated that your policy covers all drivers while driving on behalf of your nonprofit regardless of age or status of employee or volunteer. The coverage is primarily to protect the named insured - your organization. You may need to ask the insurance company to endorse the policy to extend the policy's

protection to your employees and volunteers while driving a hired, rented, borrowed or other non-owned vehicle (including their own cars).

Many insurance companies will review the driving records of your drivers and may exclude any driver with a poor driving record. This action is not permissible in all states, however, if your policy excludes coverage for a specific driver you must ensure that the excluded driver is never placed in the position of having to drive for your organization.

Occasionally an insurance company will exclude coverage for young or older drivers. This is extremely rare but if your organization has had poor loss experience that may be a policy condition that you must meet in order to purchase insurance.

We recommend that you review your business auto policy with your insurance advisor to determine if the policy contains any restrictions on covered drivers.

Verifying Personal Auto Coverage

You indicated that you require proof of personal auto insurance from all personnel driving their own vehicles for your organization's benefit. This is an excellent risk management strategy. Some insurance companies require this practice when you have personnel driving their own vehicles on agency business. In the event of an at-fault auto accident, the vehicle owner's insurance policy is the first line of coverage for a liability loss. If the owner does not have auto insurance, the responsibility for the financial consequences of the accident could be shifted to your organization. We encourage you to remind your employees and volunteers that their personal auto insurance will respond to any loss first. You should also tell them that your organization does not have any insurance policy that will reimburse them for any physical damage to their car.

Property

This report contains recommendations about managing property risks. The suggestions in this report follow the subtopic headings for the module: Building Ownership; Facilities Basics; ADA Compliance; Special Facilities; Toxic Materials; Crime Prevention; Visitors; Lighting, Landscaping, Floor Maintenance and Repair; Roof, Elevators, Escalators, Stairways; and Safety Devices.

Whether your CAA owns or rents one or several dozen facilities, you face a range of facility-related risks. The information in the report for this module offers suggestions on getting a handle on your facility risks. The critical issues facing your organization will depend on the types of facilities you own or rent as well as the way in which these facilities are used and the types of clients who attend your programs or receive services from your nonprofit. As in other areas, your insurance professional (agent, broker or consultant) and your insurance carrier should be helpful as you examine risks and select practical and affordable strategies that will enable you to provide appropriate and safe facilities for your programs.

You indicated that your Community Action Agency owns one or more buildings. A nonprofit that is a property owner has legal obligations and liabilities much broader than a nonprofit who leases space or operates out of someone's residence. For instance, an owner is responsible for the soundness of the entire building, that: code requirements are met, repairs are made, equipment (water heater, heating, ventilation and air conditioning system) is run according to manufacturers' instructions and serviced on a regular schedule, and security is provided and maintained.

As an owner, your CAA owes a general duty of care to visitors, be they guests, campers or outside rental group members. They have the legal status of "invitee." An owner must maintain the facility in a reasonably safe condition for these invitees.

Follow a Schedule

It's wise to set up a routine for safety checks, maintenance and repair. Depending on the nature of your clients and services, there are building codes and licensing requirements to be met. You will want to make certain that you all the federal, state and local regulations and laws that apply to your nonprofit. This means that you'll need to identify and implement ways to stay informed as laws and regulations change. Keep in mind that "not knowing" isn't a defense.

Maintenance and Repair Records

These routines will help avert injuries and accidents, but if you are sued, you'll want to be able to provide proof that you actually fulfilled your "duty of care." This is where a log (or checklists and repair follow-up sheets) are invaluable. Think of the log as a diary or history of the piece of equipment. Record the date of purchase, manufacturer and serial number. Record who services the equipment (boiler, fire extinguisher, alarm system, air conditioning condenser, etc.), the date of service, advice given, what was maintained, repaired or replaced. A central heating system record might say, fall service; filter replaced.

Insurance Coverage

As an owner, you'll want to be certain your CAA has basic insurance to provide risk financing in the event of a lawsuit. Claims in the wake of a "slip, trip or fall" are the most common claims filed against all businesses, including nonprofits. Your agency should purchase a collection of policies that protect your property in the event of fire or other damage (e.g., buildings, equipment, contents), as well as the

risk of claims from individuals claiming they suffered bodily injury or property damage while on your property or while participating in your agency's programs.

Renting Space

You indicated that your nonprofit rents space to others. Most property owners and landlords appreciate fully the risks and potential liabilities that exist when they operate campgrounds, conference centers, and other facilities open to the public on their property. These same owners and landlords, however, often fail to understand that these risks and potential liabilities still exist when they rent or loan their premises to outside groups.

As an owner or landlord, your nonprofit owes a general duty of care to visitors to your sites, whether they are guests, campers, or outside rental group members. These persons enjoy the legal status of invitee. An owner must use ordinary care to maintain the premises in a reasonably safe condition for invitees. The duty of ordinary care requires an owner to look for unsafe or dangerous conditions on the premises and either remedy the problem or issue an appropriate warning. This duty attaches to both regular invitees and outside rental groups, unless specific affirmative steps are taken to limit that duty.

Limit Liability

There are a number of ways that a nonprofit owner/landlord can limit its liability when dealing with rental groups. First, many states have "Recreational Use" statutes that limit a landlord's liability for any injuries that may arise if rental groups aren't charged for use of the property. See, e.g., VA. CODE. ANN. § 29.1-509 (Repl. Vol. 1997). Most of these statutes are directed to outdoor activities such as hunting, fishing, hiking, boating, etc. Under these statutes, a landowner that doesn't accept a fee for the use of its land owes no duty of care to keep the land or premises safe for use by others. These statutes also eliminate the need to warn of hazardous conditions. Assuming the statute applies, a landowner will be found liable only for gross negligence or a willful or malicious failure to warn about a dangerous condition. Gross negligence and willful and wanton conduct are different from ordinary negligence and proof of such generally requires a showing of aggravated or reckless conduct by an owner/landlord. Check with your legal counsel to see if your state has a "Recreational Use" statute and if it would apply to your situation.

Agreement

An agreement should establish, in clear terms, the duties and responsibilities of the owner/landlord and the group [borrowing the premises]. The following items should be considered for inclusion in the standard rental agreement, depending on the circumstances:

- **Maintenance and Upkeep:** While the owner typically remains responsible for any hazardous condition on the property in existence at the time of the lease, the rental agreement can establish who will be responsible for general upkeep such as trash pickup, repairing broken steps, clearing snow and ice, etc.
- **Indemnification Clause:** The agreement should include a provision holding the owner/landlord harmless for any negligent acts or omissions by the rental group during the term of the lease.
- **Instructions on Use of Property and Facilities:** The owner/landlord should provide detailed instructions on how its facilities operate or what to do if problems arise.
- **Limits on Accessible Areas:** If the group is only using a portion of the premises, or if certain areas are off-limits, those boundaries should be clearly established in the lease. Then, if a group member strays beyond this area, his status will change from an invitee to a trespasser. Once that occurs, the borrower takes the risk of the place as he finds it and the duty of the landowner is greatly reduced.

- **Potential Hazards:** Specific warnings about dangerous or hazardous conditions on the premises should be provided.
- **Delegation of Supervision:** Depending on the situation, the owner/landlord may need to provide its own staff members to assist with supervision. For example, if swimming is available on the premises, additional lifeguards may be required.
- **Alcohol Consumption:** If alcohol is part of the rental group's activities, it may be necessary to obtain a temporary liquor license. The lease or rental agreement should require the rental group to obtain both the license and, if available, liquor liability insurance, adding the owner/landlord as an additional insured. Finally, the contract should include an acknowledgment by the rental group that no one under the age of 21 will be served alcohol.

Another way for an owner/landlord to limit its liability is to require the rental group to obtain its own liability insurance to provide coverage for accidents resulting in bodily injury or property damage. If the rental group is to provide such insurance, the rental agreement should require that the lessee provide a certificate of such insurance. The rental group's policy should also name the owner/landlord as an additional insured.

Insurance

The owner/landlord should also purchase an insurance policy to cover the risks of leasing its land. General liability insurance is commercially available both for outside groups who lease or rent property and for the landowners that lease their land. Landowners should also consider purchasing medical payments coverage, which provides coverage for medical expenses of third parties injured on the premises regardless of fault (subject to policy conditions). The existence of "med pay" coverage often serves as a deterrent to lawsuits.

Release or Waiver

In some circumstances, an owner/landlord may also use a release or waiver form to eliminate its potential liability. By signing a release or waiver form, an adult participant waives his right to sue and agrees to hold the owner/landlord harmless for any injuries that might occur. Pre-injury releases have been held invalid in many states, however, based on public policy considerations. See, e.g., *Hiatt v. Lake Barcroft Community Ass'n, Inc.*, 244 Va. 191, 418 S.E.2d 894 (1992). Thus, an attorney should be consulted before such a release is used. If a release is permitted, a lawyer can prepare a well-drafted release form that should effectively shield an owner/landlord from liability. Releases or waivers signed by or on behalf of children are generally not enforceable.

After an injury occurs, owners/landlords may still limit their liability by obtaining a post-injury release. Post-injury releases are typically used to obtain an absolute waiver of all present and future claims in exchange for the payment of medical expenses or some other comparable sum. An owner/landlord often may avoid costly litigation by quickly approaching a potential plaintiff who has been injured on its premises with an offer to pay his medical bills. However, talk with your insurance company before extending such an offer.

Affirmative Defenses

Despite the use of rental agreements and waivers, there's still the possibility that an owner/landlord will be sued for an injury or accident involving a rental group member. If and when this happens, there are a number of affirmative defenses potentially available. Depending on the nature of the organization that owns the property and the particular state involved, charitable or sovereign immunity may be a defense against a claim of negligence.

Several defenses available to owners/landlords focus not on the landowner but on the plaintiff and his own conduct. Depending on the law of each state, a plaintiff whose own negligent actions contribute and cause his own injury will either be barred from recovery completely (contributory negligence) or may have his recovery reduced by the amount of his own negligence (comparative negligence). Likewise, a plaintiff who voluntarily exposes him- or herself to a known danger may have "assumed the risk" and be barred from recovery.

Obviously, it's the hope of every owner/landlord that no accidents happen, no one is injured and no lawsuits are filed. The best way to protect against the possibility of a lawsuit when renting property to an outside group is to get everything in writing. With the assistance of an attorney, an owner/landlord can obtain a well-drafted rental agreement clearly limiting its exposure. Waivers and release forms may also be used to limit liability. Finally, the procurement of insurance policies, by both the owner/landlord and the rental group, can provide assistance if liability is alleged.

This advice first appeared in the Community Risk Management & Insurance (Fall 1998), published by the Nonprofit Risk Management Center under the title: Risk Management for Rental Properties: How Landlords Can Protect Themselves Legally When Renting Their Land to Outside Groups by Stanley P. Wellman, Esq. and Stephanie P. Karn, Esq., of Harman, Claytor, Corrigan and Wellman in Richmond, Va., who advise and defend property owners and managers as to numerous liability issues.

Your nonprofit rents additional space for special events, meetings or field trips. Renting space when needed can be an economical way to manage your nonprofits assets and fulfill its mission. You might rent a bowling alley for an outing, a room at the town library for a board meeting, an historic mansion for a fund raiser or a campground for an overnight field trip. No matter what the use, it's always wise to put the agreement in writing (even if-and maybe especially if-the property is owned by a "friend" of the nonprofit). The rental agreement spells out expectations and limits of both parties and thus defusing many disputes before they occur.

Rental Agreement

Under the letter of the law, "rent" refers to property borrowed for a fee or for free. Rental agreements written by the owner/landlord serve the purpose of protecting the landlord. They are contracts and should be reviewed by the nonprofit's attorney before being signed. The attorney can advise you whether or not you are getting the deal you discussed and whether you might protect yourself in other ways.

A rental agreement should establish, in clear terms, the duties and responsibilities of the owner/landlord and the rental group. The following items should be considered for inclusion in the standard rental agreement, depending on the circumstances:

- **Maintenance and Upkeep:** While the owner typically remains responsible for any hazardous condition on the property in existence at the time of the lease, the rental agreement can establish who will be responsible for general upkeep such as trash pickup, repairing broken steps, clearing snow and ice, etc.
- **Indemnification Clause:** The agreement should include a provision holding the owner/landlord harmless for any negligent acts or omissions by the rental group during the term of the lease.
- **Instructions on Use of Property and Facilities:** The owner/landlord should provide detailed instructions on how its facilities operate or what to do if problems arise.
- **Limits on Accessible Areas:** If the rental group is only using a portion of the premises, or if certain areas are off-limits, those boundaries should be clearly established in the lease. Then, if a renter strays beyond this area, his status will change from an invitee to a trespasser. Once that occurs, the renter takes the risk of the place as he finds it and the duty of the landowner is greatly reduced.

- **Potential Hazards:** Specific warnings about dangerous or hazardous conditions on the premises should be provided.
- **Delegation of Supervision:** Depending on the situation, the owner/landlord may need to provide its own staff members to assist with supervision. For example, if swimming is available on the premises, additional lifeguards may be required.
- **Alcohol Consumption:** If alcohol is part of the rental group's activities, it may be necessary to obtain a temporary liquor license. The lease or rental agreement should require the rental group to obtain both the license and, if available, liquor liability insurance, adding the owner/landlord as an additional insured. Finally, the contract should include an acknowledgment by the rental group that no one under the age of 21 will be served alcohol.

To see sample rental agreements, conditions or request forms, consider visiting the following Web sites. You'll note that they offer different benefits and limitations depending on the facility. Your nonprofit's rental agreement will, too, depending on what you require and want.

- Bingo Hall Rental Agreement - www.michigan.gov/documents/BSL-CG-SampleBingoHallRentalAgreement_1402_7.pdf.
- Use & Lease by Non-University Groups (University of Minnesota) - www.fpd.finop.umn.edu/groups/ppd/documents/procedure/Use_Lease.cfm

You indicated that your nonprofit leases space from someone else. Leasing relieves you from some obligations and exposures with regards to repair, maintenance and compliance with regulations, however, it's important to know that you still have facility exposures.

Your nonprofit may be liable for injuries or accidents that occur within your rented space, and some, but not all, damages to the space you rent. You may be liable for damage done to another tenants premises caused by your negligence, such as letting a bathtub or sink overflow. The organization is potentially liable for damage done to the landlord's property by staff, clients, visitors, and vendors. And you may be responsible for accident or injury incurred by a employee, volunteer, client or visitor to its premises such as a trip and fall incident, or a burn from an auxiliary space heater.

On the other hand, the nonprofit isn't liable for damage due to roof leaks caused by a damaged or poorly maintained roof. It isn't liable for damage caused by hurricanes, tornadoes, floods, mud slides, hailstorms or other "Acts of God." It isn't liable for pipes that freeze and burst because the building's heating system wasn't maintained and repaired by the landlord.

By leasing the nonprofit organization's space, you limit-but don't eliminate-your facilities exposures.

Read Your Lease Agreement

Read your lease agreement to find out what your responsibilities are. If you don't understand what the lease says, ask your legal counsel or your insurance professional to look it over with you. Don't sign a lease agreement until you have read and understand what it means for you. This is a legally binding document. Don't be shy. Speak up. Ask questions. Once you've signed it, you've agreed to all the terms whether or not you understand them.

In general, the landlord is responsible for complying with all building and health codes. The landlord is responsible for the electrical, plumbing, heating and ventilation systems, and for supplying heat and hot water, and for keeping the hallways safe and sanitary. The landlord is responsible for the security for the building, which includes door and window locks, roof access, and lighting.

You indicated that someone is responsible for conducting routine inspections of your premises. If you

haven't done so, you might wish to create checklists for his or her to use to insure consistency of inspection and reporting. The checklists serve as a paper trail, documenting what was checked, when, by whom, and what was found. These checklists should be filed in chronological order. The paper trail will work to your advantage if someone claims compensation for an injury or accident that occurred while they were on the nonprofit's premises. It will serve as part of your defense that your nonprofit provided an appropriate level of care to visitors or participants.

Checklists can be developed for each area of concern, such as:

- Equipment
- Security
- food preparation area
- floors
- toxic materials
- restrooms

A sample checklist follows:

Public Playground Safety Checklist

Name of Organization: _____

Address: _____

Date: _____

Inspector's Name/Title: _____

Yes

Yes

Surfaces around playground equipment have at least 12 inches of wood chips, mulch, sand or pea gravel or have mats made of safety-tested rubber or rubber-like mats.

Protective surfacing extends at least 6 feet in all direction from play equipment.

Protective surfacing around swings extends twice the height of the suspending bar in back and front.

Play structures more than 30 inches high are spaced at least 9 feet apart.

"S" hooks are closed.

Bolt ends are flush with the surface.

Openings in guard rails measure less than 3.5 inches or more than 9 inches apart.

Spaces between ladder rungs measure less than 3.5 inches or more than 9 inches.

Edges of equipment are smooth.

Concrete footings are covered.

Tree roots are covered.

Rocks have been removed.

Elevated platforms and ramps have guardrails to prevent falls.

Litter has been picked up.

Walls, equipment and paths are free of graffiti.

Standard Maintenance Schedule

You indicated that you follow an equipment maintenance schedule and maintain a detailed repair log. If you are a building owner this will make your building more economical and safer to run in both the short- and long term. The log can also be used to prove that the nonprofit fulfilled its duty of care by keeping equipment fine-tuned and running according to manufacturer's directions, met code requirements and acted responsibly.

Different pieces of equipment require difference maintenance schedules. HVAC systems, which include the heating, ventilation and air conditioning for the building, require seasonal inspections. It's traditional in cold climates to have the boiler, air handler or heat pump inspected in the fall prior to switching over from cooling to heating function. At this time, ducts can be cleaned and inspected for leaks, thermostats tested for response and filters replaced. And the air conditioning system can be winterized. The same is true for the air conditioning system in the spring. Prior to switching from heating to cooling, the chillers of individual window units or a central system should be checked for level of refrigerant and leaks, and the thermostats should be tested for response.

Water heaters should be inspected annually for rust spots, leaks (water on the floor). The thermostat should be tested to make certain it is accurate. You want to maintain hot water at 120 °F, which is not enough to sanitize, but cool enough to avoid scald burns.

The repair log should have the name of the equipment, serial number, manufacturer, date of purchase. The date, service company's name/address/phone number and what was done should be recorded for each inspection. For instance, ductwork tested for air flow; air at vent in playroom seemed restricted; metal ducts in area were inspected; two sections had come uncoupled; sections were re-attached; sealant was added to secure sections to one another; air flow was re-tested and was within the standard range.

Prioritizing Safety Violations

You indicated that your nonprofit gives safety violations precedence over other maintenance and repair assignments. This means if you've scheduled carpet cleaning that month, but the roof is leaking, your nonprofit will put its resources into repairing the roof to reduce further water damage. Of course, if the leaking roof has caused the carpet to become water-logged, which if left untended will cause mold and bacteria to grow, reducing air quality and increasing the possibility of respiratory illness for all who enter your premises, you'll have to rethink the allocation of resources. You'll find it prudent to both repair the roof and eradicate the water from the carpet, which will probably include a good cleaning at the end.

You indicated that your nonprofit has a fire evacuation plan. This is not only a wise risk management procedure, it is probably a jurisdictional (city, town, parish or county) requirement. If you haven't had your plan reviewed by the local fire department, we suggest that you do. These professionals will spot things you might have missed. A walk through your facilities will also familiarize the firefighter with your premises in case of fire.

Crisis Management

You indicated that your nonprofit has a crisis management plan. This is laudable. Your nonprofit is ahead of the norm. Be sure that you also have an inventory of vital assets your nonprofit requires to achieve its mission. It's important to conduct an inventory when there is no crisis because it may be impossible to do so in the aftermath of a crisis (such as a hurricane or flood) when premises and property are damaged or destroyed. The vital asset inventory will be helpful for claims adjustment with the insurance company and possibly the Federal Emergency Management Agency (FEMA) who requires detailed documentation of what was destroyed in order to provide replacement dollars.

In addition to a list of property, details for replacement or remuneration include: owned or leased, brand name, model name/number, serial number, leasing agreement number.

If your facility includes offices, as well as delivery equipment (such as recreational or playground equipment, a computer learning center or medical equipment), you might develop separate inventories based on the different uses of your facility.

Critical records should also be inventoried: insurance forms, leases, partnership agreements, and clients, volunteer and contributor databases. Keep copies on site for reference and use; backup copies should be kept off site in a lock box or in your attorney's office. A fixed asset schedule is a good place to start to build your nonprofit's asset inventory.

Once your nonprofit has its inventories completed, a hard copy or an electronic copy should be stored off-site. If the nonprofit is in a geographically hazardous area, off-site, may be many miles away in a bank safety-deposit box.

You indicated that your nonprofit organization doesn't have a breach of security plan. This is a specialized crisis management plan for specific scenarios. The plan is a summation of many hours of thinking through what the risks would be if security is breached during the programming day (or night). It gives whoever is in the facility at the time a sequence for what to do and when to do it.

Two sample plans are featured below.

Intruder or Individual With Deadly Weapon

The principal or designee should follow these guidelines:

1. *Notify law enforcement and district office immediately. Identify the student or gunman (if known), the student or gunman's location, and the location of the weapon.*
2. *Have the on-site law enforcement officer or designee determine the level of threat.*

If the level of threat is **high**, have the law enforcement officer call for additional backup, attempt to get the weapon from the gunman or student through negotiation, or take other appropriate law enforcement action. If the level of threat is **low**, call the student to the office and have the law enforcement officer take the appropriate action.

The staff should follow these guidelines:

1. Avoid confronting the student or gunman.
2. Notify the school office immediately.
3. Identify the student or gunman (if known), the student or gunman's location, and the location of the weapon when notifying the office.

Hostage Situation

The teacher should attempt to follow these guidelines:

1. Stay calm.
2. Don't be a hero.
3. Follow instructions of captor.
4. Cooperate; be friendly if possible; don't argue with or antagonize captor or other hostages.
5. Inform captors of medical or other needs.

6. Be prepared to wait; elapsed time is a good sign.
7. Don't try to escape; don't try to resolve situation by force.
8. Be observant and remember everything that is seen or heard.
9. If a rescue takes place, lie on the floor and await instructions from rescuers.

The principal or office will be responsible for the following:

1. Immediately notify law enforcement.
2. Move other students and teachers completely away from those who are in the hostage situation.
3. Keep everyone as calm as possible.
4. Be prepared to answer questions from media or family.

Visit www.wa.gov/ago/ourschool/5_plan/pearl.htm where you will find these plans, as well as others. This school-based guide can be adapted to nonprofit organizations that run types of programs and services other than schools.

You indicated that your Community Action Agency doesn't have a system for being made aware of Consumer Product Safety Commission warnings and recalls. An easy way is to logon to the CPSC homepage at www.cpsc.gov/ and click on Recalls/News. You can sign up online for the "recalls" list of the "child" list. Media releases describing the recalls will be sent via e-mail to the address you provide.

You can also search the CPSC website by current media releases, product type, company, product description, chronologically, general recall category or products not under CPSC's jurisdiction (e.g., cars and drugs).

Food Preparation

You indicated that your nonprofit has a food preparation area in one or more of your facilities. Food preparation areas require special attention from a facilities risk management perspective. Commercial kitchens have stringent requirements for cleaning, servicing, and replacement of equipment and parts. They also demand detailed record keeping and, in some instances, a certificate of inspection. Check your state's mechanical and fire codes for specifics. Also run a search for "commercial kitchen."

Fire Suppression

State codes and the National Fire Protection Association (www.nfpa.org/Codes/index.asp) spell out what is required. Suppression systems vary depending on the source of the fire. There are automatic sprinkler systems, dry-chemical systems, carbon dioxide extinguishing systems and wet-chemical systems. NFPA Standard 10 provides guidance on the selection, location and maintenance of portable fire extinguishers.

Ventilation and Hoods

Check state code for specifications for ventilation and hoods. Grease-laden vapors are created by foods cooked in upright broilers, deep fat fryers, grills, griddles and range tops. The grease coats the insides of ventilation hoods, fans and filters (along with chimneys and flues and associated equipment in commercial kitchens) and is the cause of most commercial kitchen fires.

Electrical Wiring

Make certain your nonprofit's wiring is "heavied up" to accommodate the capacity needs of regular or commercial kitchen equipment and prevent short-circuiting and/or electrical fires.

Operation and Maintenance

Equipment should be operated in accordance with manufacturer's instructions. Hoods, grease-removal devices, fans, ducts and other accessory objects should be cleaned at intervals necessary to prevent the accumulation of grease. Record the time, date and extent of cleaning and keep records on the premises.

Fire extinguishing systems should be serviced at regular intervals (check code). Inspection should be by qualified people; a certificate of inspection may be required by your state.

Fusible links and automatic sprinkler heads should be replaced annually (check code) and other protection devices should be serviced or replaced according to manufacturer's directions.

Place a thermometer in the refrigerator and freezer to make certain proper temperatures are maintained. A refrigerator temperature of 41° F. or less is important because it keeps existing bacteria from multiplying. A freezer temperature of 0° F or less stops bacterial growth. Oven temperatures should be checked and regulated so that the temperature in the oven matches the recipe cooking temperature.

Water heater temperature should be maintained at 120° F to minimize scalding burns. Your nonprofit may want to attach a mechanism to the automatic dishwasher equipment to boost the hot water temperature to 140° F, which kills salmonella bacteria.

According to the Food and Drug Administration, bleach or commercial kitchen-cleaning agents are the best sanitizers, when they are diluted according to manufacturer's instructions.

Keep flooring in repair: replace broken chipped or missing tiles, and adhere any linoleum that comes unglued.

You indicated that your nonprofit's facility includes a playground.

Playground Checklist

- Does your nonprofit perform a visual and written inspection of the playground each week it's in use by children?
 - Do surfaces around playground equipment have at least 12 inches of wood chips, mulch, sand or pea gravel or have mats made of safety-tested rubber?
 - Does protective surfacing extend at least 6 feet in all directions from play equipment?
 - Does the protective surfacing for swings extend in back and front to twice the height of the suspending bar?
 - Are fall zone materials replaced as needed or recommended?
 - Are the play structures that are more than 30 inches high spaced at least 9 feet apart?
 - Does your nonprofit check for dangerous hardware (such as open "S" hooks or protruding bolt ends, sharp points or edges)?
 - Do spaces that could trap children, such as openings in guardrails or between ladder rungs, measure less than 3.5 inches or more than 9 inches?
 - Does your nonprofit check for tripping hazards such as exposed concrete footing, tree stumps and rocks?
 - Do elevated surfaces, such as platforms and ramps, have guardrails to prevent falls?
 - Are the play areas accessible and convenient to phones, water and storage?
 - Is the area fenced and gated or are there natural barriers such as hedges between the play areas and streets, parking lots, animals or passersby?
 - Is the fence a minimum of 4 feet high?

- Are the gates located away from streets?
- Is there a barrier between the children's playground and any water such as swimming pool, fountain, or water-retention pond?
- Does your nonprofit inspect the fence for defects such as jagged or protruding parts?
- Is the area properly drained to eliminate standing puddles of water?
- Is play equipment with moving parts, such as swings, located well away from walkways to avoid collisions?
- Is equipment examined for broken pieces that can trip, pinch, crush, splinter, cut or puncture?
- Is equipment repaired or replaced in a timely manner?
- Is permanent equipment, such as climbers and slides, anchored firmly and deeply following manufacturer's recommendations and licensing standards?
- Is the play area designed to allow the teacher or playground supervisor to view the entire playground at once?
- Is the playground equipment developmentally appropriate for the children that will use it?
- Does your nonprofit repair or replace the most life-threatening or dangerous equipment hazards first?

As a reminder, the U.S. Consumer Product Safety Commission's *Handbook for Public Playground Safety* offers formulas for determining the depth for various surface materials. You can download the publication from www.cpsc.gov/cpscpub/pubs/325.pdf

The U.S. Access Board, a federal agency committed to accessible design, publishes *Accessibility Guidelines for Play Areas*, which is available at www.access-board.gov.

You indicated that someone in your agency performs a visual and written inspection of the playground each week it's in use by children. That is terrific. All equipment must be regularly inspected for safety and scheduled for maintenance. Equipment should meet safety standards recommended by the American Society for Testing and Materials (www.astm.org), the U.S. Consumer Product Safety Commission (www.cpsc.gov) or the Consumer Federation of America (www.consumerfed.org/).

You answered that there is a barrier between the children's playground and any water such as swimming pool, fountain, or water-retention pond at your nonprofit's facility. You may be aware that drowning is the second leading cause of unintentional injury-related death in children ages 14 and under. Because children can drown in as little as one inch of water, they are at risk in wading pools, bathtubs, buckets, diaper pails, toilets and decorative pools. Preschoolers are at greatest risk around swimming pools and spas. School-age children and teens are most likely to drown in open bodies of water: lakes, ponds, streams, rivers and swimming pools. Children of all ages with seizure disorders are at greater risk of drowning than other children are.

You indicated that your nonprofit's play area is designed to allow the teacher or playground supervisor to view the entire playground at once. Supervision of children at play is one of several strategies that will help protect children from playground injuries and death. The others include design and layout of the playground equipment, regular maintenance, and timely repair of equipment.

You answered that your nonprofit's playground equipment is developmentally appropriate for the children that will use it. This is not only wise risk management, but meets the Consumer Product Safety Commission's guidelines.

Each year more than 200,000 children go to U.S. hospital emergency rooms with injuries associated with playground equipment, reports the U.S. Consumer Product Safety Commission. Most of these injuries are from falls to the surface surrounding equipment or onto the playground equipment itself.

Falls account for the greatest number (75 percent) and the most severe damage to children on playgrounds. According to the Consumer Product Safety Commission. The CPSC found that slides were a frequent cause of falls for younger children and climbing equipment was the most frequent source of falls for children older than six. The severity of the injury depends on the height of the fall, the position of the child's body when it hits the ground and the surface on which the child lands. Standards exist for the height of slides, swings and climbing apparatus depending on the age and, thus, developmental stage of children.

The CPSC Handbook for Playground Safety says "a playground should allow children to develop progressively and test their skills by providing a series of graduated challenges." The challenges presented should be appropriate for age-related abilities and should be ones that children can perceive and choose to undertake.

"Preschool and school-age children differ dramatically, not only in physical size and ability, but also in their cognitive and social skills. Therefore, age-appropriate playground designs should accommodate these differences with regard to the type, scale and the layout of equipment." Recommendations throughout the handbook address the different needs of preschool (2-5 years) and school-age (5-12 years) children.

The handbook may be read online or downloaded as a pdf file (www.cpsc.gov/cpsc/pub/pubs/325.pdf).

Preschoolers require close supervision; older children require someone to "referee" so they don't misuse equipment, overcrowd or rough house.

You indicated that your nonprofit doesn't run a thrift shop, but does it have a museum shop or a cafeteria that invites the general public into your facilities? Thrift shops, museum shops, cafeterias and other services that invite the general public into your nonprofit's facility to purchase items increases the nonprofit's risk in several areas: security, property, employee and financial.

Your nonprofit will need to think about:

- entrance/exit controlled access.
- door and window security.
- cash receipt reconciliation and banking at end of operating day.
- inventory control systems.
- customer activity monitoring.

You answered that your nonprofit does provide daycare. Daycare for the very young to the very old has special requirements for building safety. You'll want to check the licensing and regulations for the state(s) in which your nonprofit organization resides to make certain that your facility meets the requirements. In addition, you'll need to look at the space from the client's viewpoint.

If your nonprofit serves small children, the nonprofit's inspectors should get at a child's eye level to discover protrusions, trip and fall potentials, uncovered electrical outlets, looped cords, small holes, rough edges that could cause injury or accidents.

If the clients are elderly, consider how well the floor surfaces accommodate walkers (wheeled or not), wheelchairs, shuffling gaits, legs that don't lift easily and reflexes that are slowed. Are door handles easily opened and water faucets easily turned on and off by hands that are weakened or crippled?

In general, no matter what the age of the clients, the answers to the following questions should be yes.

- Is the area well ventilated?
- Are screens securely fastened?
- Do upper story windows have window guards?
- Are floors washable in areas where messy activities (painting, eating) take place?
- Do electrical outlets have protective devices over or in the sockets?
- Do carpets or masking tape cover appliance or other electric cords?
- Are cords from window coverings (drapes, curtains and blinds) secured?
- Is the hot water kept at 120°F to avoid scalding burns?
- Are harsh chemicals labeled and kept in a locked cabinet or closet? Have I checked to see if OSHA requires that a Material Safety Data sheet be kept on file for any chemicals we use?
- Are flammable liquids properly labeled in a tightly closed safety can that is outside, out of reach of children and far away from ignition sources (pilot lights on gas water heater, gas furnace, gas dryer or gas range)? Flammable liquids include: gasoline, acetone, turpentine, alcohol, benzene, charcoal lighter fluid, paint and lacquer thinner, and contact cement.
- Are cleaning supplies secured?
- Is food prepared on sanitized counters and with sanitized equipment?
- Are radiator covers nonmetallic?
- Do you have a CO monitor outside the nap-room door?

Child specific

- Is the facility designed for maximum supervision of children at all times?
- Are child-size toilet facilities designed with low-dividers and doors or no doors on stalls?
- Are microwave ovens, or ranges in an area that is kept off-limits to children?
- Are window guards installed to prevent children from falling out of windows? (For windows on the 6th floor and below, install window guards that adults and older children can open easily in case of fire. For windows on the 7th floor and above, permanent window guards can be installed) Or, install window stops that permit windows to open no more than 4 inches.

Older Adult specific

- Are handrails along the hallways and all stairways?
- Are toilet seats raised?
- Is seating placed along long hallways for people to rest?

You answered that the space used by your nonprofit for daycare was designed specifically to serve young children. Adhering to state licensing and federal regulations helps manage risk to employees, volunteers, children and families. Licensing standards, designed to assure minimal standards for health and safety, are set by each state and vary widely.

Make certain someone in your nonprofit is responsible for monitoring changes, deadline dates and compliance. You'll want to "bookmark" these Web sites on the office computer: Consumer Product Safety Commission, www.cpsc.gov/; Access Board, www.access-board.gov/; Americans with Disabilities Act, www.usdoj.gov/crt/ada/adahom1.htm and your state licensing and regulation URL.

You answered that your nonprofit facility was tested for the presence of toxic building materials, such as lead-based paint, asbestos, lead pipes and solder. Once tested you'll want to have these toxic substances managed, replaced with nontoxic substances or eliminated.

Regulations

Refer to Guidelines for the Evaluation and Control of Lead-Paint Hazards in Housing published by the

Department of Housing and Urban Development. Title X Residential lead-Based paint Hazard Reduction Act of 1992, part of the Housing and Community Development Act of 1992 (P.L. 102-550).

State laws affect removal, transportation and disposal of lead-based paint. Refer to state environmental and public health agencies for regulations.

Local laws mostly deal with safety of building occupants. Check with community health departments, poison control centers and offices of housing and community development.

Owner's Responsibility

If your nonprofit owns the building(s) where abatement is being done, check with the state office to see if the project requires a certified contractor. Make certain that the contractor takes legal responsibility for the crew's safety, for following all applicable laws, for requiring that those who transport and dispose of hazardous waste have liability insurance as a protection for the nonprofit.

Alert any contractor hired to provide interim treatment to reduce lead hazards that lead-based paint is present and it's his responsibility to follow worker safety standards (OSHA 29CFR 1926) to protect workers and to thoroughly clean-up all lead-laden dust upon completion of the project. The regulation is available from Department of Labor, Occupational Safety and Health Administration, www.osha.gov.

Maintenance and Re-Evaluation

Following treatment, especially is using short-term solutions, it's critical to provide ongoing maintenance and re-evaluation.

Storage of Toxic Materials

You answered that your nonprofit stores toxic materials such as paint, solvents, and cleaning solutions.

- Never leave chemicals in unmarked contains.
- Always store the MSDS copies in a safe and easily accessible central area.
- In addition, flammables must be stored separately, preferable outside the building in a secured area.

Harsh chemicals should be locked in a cabinet with a Material Safety Data sheet kept on file. (MSDS are included in any chemical shipment and made available for end users. They are also available on line. Or you can request a specific MSDS from the manufacturer, who can send it by fax.) The MSDS contain important information about chemicals, specifically proper handling and spill cleanup instructions. They also include chemical compatibilities, storage information, recommended personal protection and if a chemical can kill, how it can kill and what to use to keep it from killing.

Flammable liquids include gasoline, acetone, turpentine, alcohol, benzene, charcoal lighter fluids, painting and lacquer thinner and contact cement.

You answered that flammable liquids are properly labeled and stored in tightly closed safety cans that are outside the building, out of reach of children, and far away from ignition sources (pilot lights on gas water heaters, furnaces, dryers or ranges).

Flammable liquids include gasoline, acetone, turpentine, alcohol, benzene, charcoal lighter fluids, painting and lacquer thinner and contact cement. This means that anyone who can read English knows that they need to take precautions when handling this liquid.

Are you aware of the Toxic Substances Control Act (TSCA) of 1976 was enacted by Congress to give EPA the ability to track the 75,000 industrial chemicals currently produced or imported into the United States. Log on to www.epa.gov/region5/defs/html/tsca.htm to read about the act and link to the Inventory.

High Crime Neighborhoods

You answered that none of your facilities is located in a high-crime neighborhood. If employees and volunteers visit high crime areas to provide services or products, you'll want to offer them a class in street smarts. In general, it's wise to review basic safety precautions with your employees and volunteers who will be traveling into unknown and potentially risky territory to deliver services or conduct other mission-critical activities. These reminders may seem old hat to some and others may never have thought to consider them. By instructing everyone at the same time, you make certain the rules of the street savvy have been reviewed, and everyone's operating under the same guidelines. We offer the following checklists for consideration when you're concerned about staff working in the field.

Heading Out

Before you go out on an assignment:

- Learn about the area and what precautions you should take.
- Map your route.
- Make sure your mobile phone battery or pager is charged.
- Leave a complete itinerary with the appropriate contact at your organization, including an expected time of return.
- Leave valuables at home or locked in your office or your car's trunk.
- Separate your house keys and car keys.

Pre-Trip Inspection

If you are driving to your assignment in your own vehicle or the nonprofit's vehicle:

- Make certain the vehicle is well-maintained and key safety equipment is working as intended (the headlights and brake lights work, the wiper blades clean, not smear, the horn honks, the brakes slow and stop the vehicle, and tires have treads)
- Check that the gas tank is filled at least half way.
- Keep the doors locked.
- Keep the windows rolled up whenever possible.
- Adjust your driving speed to weather conditions (slippery surface, poor visibility, bridges that freeze before roadways).
- Watch roads. In urban areas, check for potholes, dark unlit areas, broken glass and debris, dead ends and roadblocks. In rural areas, watch for narrow, winding roads with no shoulder, animals in the roadway, and unpaved roads.
- Seasonal issues: flooding streams; avalanches of snow, rocks or mud; or amorous animals (moose, deer, and elk) lured to the roadway.
- Keep your car in gear while waiting at traffic signals and stop signs. If approached or threatened, honk your horn and drive off.
- Drive in the lane closest to the center of the road to give yourself maneuvering room.
- Leave enough space between your car and the car in front to permit you to go around it quickly, if necessary.

Parking Tips

When parking your vehicle:

- Park as close to the entrance as legally possible (under a street light at night).
- Avoid parking next to vans, campers or trucks that could conceal someone from your view.
- Back into slots in an underground garage or parking lot.
- Engage the parking brake.
- Have exact change for parking meters (but don't keep change in your vehicle).
- Take the parking lot ticket with you.
- Check your surroundings before unlocking the door; if anyone strikes you as suspicious, don't get out of the car.
- Don't leave keys in the ignition.
- Don't leave a spare key hidden in or on the car.
- Don't leave packages or briefcases etc. on car seats; they're only a temptation to break in and steal.
- Lock your vehicle.

When Trouble Materializes

When you have car trouble:

- Drive to a busy, well-lighted street, if possible.
- Pull on the parking brake and turn on the vehicle's flashing lights.
- If you have a mobile phone, call for assistance (the police, a towing service, a friend or colleague).
- Wait inside your car with the windows rolled up and the doors locked until the person you called arrives.
- Never leave with an unknown person to seek help. Instead, through a closed window, ask the person to call a towing service or the police.

When You're Fearful

If you think someone is following you while driving:

- Keep driving until you find a safe area: the nearest police or fire station or an open gasoline station or grocery store where you can call the police.
- While driving to the safe area, attract attention to yourself by honking your horn in short blasts and by turning on the flashers.
- Don't drive home, pull into a driveway or pull over to the side of the road where you could be trapped.
- Try to record the license number, color, make and type of vehicle and report it to the police.

Stay Safe

When returning to your vehicle:

- Carry your key in your hand.
- Note occupied vehicles around you.
- Check under the vehicle and in its interior to make certain no one is hiding there before you enter.
- Lock the doors as soon as you enter the vehicle.

Public Transportation Tips

If you're using public transportation or a taxi to get to your assignment:

- Determine risk levels of bus, subway, train, and walking to the destination.
- Scope out the route by car with a friend first to identify the safest route to take from the stop to your destination.
- Use busy, well-lit stops.
- Keep aware of your surroundings-no dozing or daydreaming.
- If you take a taxi there, how will you get back? Will cabs hailed on the street stop to pick up passengers in that neighborhood? If called, do they come?
- Ask the taxi driver to wait until you are inside before leaving.

Walk With Care

When walking to your assignment:

- Choose busy, well-lighted streets; avoid isolated areas, alleys, vacant lots, abandoned buildings and construction sites.
- Walk purposefully in an alert and self-assured manner (head up, back straight); know where you're headed and act as if you know; and don't dawdle or window shop.
- Don't advertise your newness to the area by referring to a map.
- Be alert to your surroundings; observe the people around you.
- Identify safe places (stores; or fire, police or service stations) where you might go (or run) if you need help, need a telephone, need to wait out a dangerous situation.
- Wear flat, comfortable shoes that you can run in should the occasion arise.
- At night, walk near the curb (away from buildings and recessed doorways) to give yourself room to run.
- Dress prudently (not provocatively) and leave flashy jewelry (even costume) at home.
- Don't fill your arms with packages; keep one arm and hand free, if possible.
- Secure your briefcase, purse or other hand-carried items against your person.
- Keep some extra money separate from wallet or purse for emergencies.

Forewarned is forearmed. If employees and volunteers stay aware, trust their intuition, protect their personal space, and maintain a degree of healthy distrust, they will be less of a target. Knowing how to make themselves less of a target will reduce the risk that your staff will come to harm while traveling to and from service assignments.

Security Assessment

You answered that police haven't done a security assessment of your nonprofit's facility. This would be helpful in knowing where your nonprofit stands. Have you done everything you can to secure the premises and provide for the safety of your personnel, clients and visitors? If not, you'll have a list of improvements that can become a strategy. Set priorities and budget to increase your security. Work with your insurance agent or broker as you increase security to reduce premiums based on the changes you have made.

Sign in/Sign out Log

You answered that your nonprofit uses visitor sign in/sign out logs. Many people have a narrow view of who constitutes a "visitor" to the building. For security purposes, anyone who isn't an employee — temporary employees, VIPs, consultants, contractors, volunteers and clients — should sign in upon entering the building and sign out when exiting. When in doubt, you might ask an unknown visitor for photo identification to verify the person is who he says he is. Record the driver's permit number or other traceable number in case you need to follow up later.

According to TEMTEC, a manufacturer of badge and identification products, you should record all visits in a visitor log. The log should include:

- signature.
- name.
- date.
- arrival time.
- name of the employee visited.
- departure time and
- purpose of visit.

You might also wish to record the department/area visited, Visitor ID number, company phone number and vehicle license number. TEMTEC posts the "ABC's of Visitor Control" on its Web site, www.tempbadge.com, which lists other helpful tips for visitor control.

ID Badges

You answered that visitors aren't required to wear identification badges while in your facility. How do you tell the people who have legitimate business with your nonprofit from someone who just wanders in off the street? How do you know if someone in the hazardous chemical storage area has business there? How do you know who the person is on the playground? Perhaps your staff is small enough that they all know each other, but do they know by sight all the parents and guardians of the clients under your care?

A visitor badge program helps quickly legitimize people in the building who aren't staff. The badge says the visitor has signed in at the reception desk or guard station and provided information about who they are and what their business is. The visitor should be instructed to turn in the badge when signing out of the building.

Badges may be all alike or color-coded to quickly identify various types of visitors and their business with the organization:

- temporary employees,
- VIPs,
- consultants,
- contractors,
- volunteers and
- clients.

The word "Visitor" and the date should be large and bold. You can add the nonprofit's logo. You can add the building or department authorized to be visited. (Some nonprofits provide photo IDs for regular volunteers in lieu of daily "Visitor" passes.)

The badges can be purchased from an office supply store or produced by the nonprofit's computer. They can be purchased from badge and identification manufacturers from the simple (standard ID) to the most technologically sublime (automatically expiring and/or time sensitive).

No matter how simple or fancy, the purpose is to monitor and record the entrance and exit of people who are not employees of your nonprofit.

You indicated that escorts aren't required for visitors in your building. This practice along with visitor logs and visitor badges provides a level of protection for employees and clients of your nonprofit. Consider instigating this practice if you serve a vulnerable population, or if it would be easy for visitors

to get lost or “lose themselves” while navigating your facility. This would be the case if you have many floors or a low building that spreads over a lot of ground or has many wings or corridors.

The receptionist or guard at the building entrance would phone the person being visited and ask the visitor to be seated until the escort arrives. The visitor log could have a space to indicate who the escort is for each visitor.

Parking Lots

You answered that entrances to your nonprofit's parking lot are well lit to avoid shadows where people can hide.

Lot owner or operators and business owners have a duty to protect the area. Personal injury suits do name these people in lawsuits for negligence. You can increase light levels by painting walls white. Lighting must be adequate for motorists to see the back seat of their vehicles before unlocking the door. Pathways to and from the building should be lighted well enough to be able to see a person at 50 feet. Perimeter walls and shrubbery should be kept lower than 3 feet and all tree branches lower than 6 feet should be trimmed.

In addition to having a sound lighting design, you want to make certain that the burned out or broken lights are replaced promptly. Post a phone number where patrons can quickly report nonworking lights.

You answered that lighting problems (burnt out or broken bulbs, and shorts) are fixed in a timely manner. This is a responsible way to protect your people from accident and injury and the nonprofit from a negligence claim in a personal injury lawsuit.

Fencing

You answered that your property is fenced.

Here are a few questions to ask in follow up:

- Does the nonprofit have follow an inspection, maintenance and repair schedule?
- Is the distance between openings in the fence less than 3.5 inches to protect children from being trapped?
- Does the fence have a self-closing gate? Does the gate latch to keep children safety within the property?

You indicated that the floors are free from slipping or tripping hazards. This means that wall-to-wall carpets are tacked down securely; door thresh holds are nailed down; there are no scatter rugs on which to slide; large area rugs are stuck to the floor with double-sided tape; and liquid spills are wiped up immediately.

Floor Warning Signs

You answered that warning signs are posted when the floors are being maintained at your nonprofit. Signs are available in English or Spanish or a combination of English/Spanish. Signs state:

- Caution Wet Floor,
- Restroom Closed,
- Wet Floor Caution or
- Closed for Cleaning.

Search the Web under "janitorial supplies" + "caution sign" for suppliers.

Roof

You answered that the roof on your facility is inspected and repaired on a regular basis. Having your roof inspected can keep minor problems from turning into major remediation. The cost to inspect a roof is measured in pennies per square foot versus dollars per square foot to repair a roof.

A comprehensive inspection should include the roofing materials (slate, wood or asphalt shingles, rolled asphalt or rubber roofing, slate, standing seam tin or copper, gravel and tar are some of the choices) for holes, broken or cracked surfaces, flaking paint. Look at flashing around chimneys, skylights, vents, pipes, drains, HVAC units and near the walls. Also have previous repairs/patches checked to make certain they are holding.

You also want the roof drained of any standing water: unplug drainage systems and fill low spots. The gutters and downspouts should be cleared of debris and well attached to the building and ground. Look at caulking around planned openings (ducts, pipes, conduit, etc.); clean out dry caulking and replace with fresh. Clean skylights. Remove any debris from the roof: tree limbs and twigs, leaves, nails, glass, etc.

Once the inspection is complete, a professional roofer can be contracted with to make repairs.

You answered that access to the roof is controlled. Are internal hatches or doors to the roof locked from the inside? Does your nonprofit maintain a roof log? The log should record the date and time, the people who went on the roof, their purpose, any repairs made and the time they came off the roof. This can be kept with the receptionist or near the roof hatch or door.

Elevators

You answered that there is at least one elevator in your facility.

- Is the elevator inspected and serviced on a regular schedule?
- Is the elevator capacity posted in the elevator?
- Is there an emergency phone in the elevator?
- Are turnaround spaces in elevators 51 inches wide to conform to the Americans with Disabilities Act?

Fire Safety

You answered that your facility does have fire extinguishers.

- Are they updated regularly (inspected or recharged)?
- Are they placed at logical sites (near kitchens and other sources of heat or flames)?
- Are they easy to access?
- Are they the correct type for the fire (flame, chemical, other)?

Do you restrict their use to people who have been trained in proper use?

You answered that you have smoke alarms in your facility.

- Do they have lithium-powered batteries (that can last up to 10 years) and hush buttons?

- Do you replace batteries in other types of smoke detectors annually?
- Do you test smoke alarms monthly?
- Are the smoke alarms easy to access?

Have all the smoke detectors been tested to be sure that they are in working order?

You indicated that your facility has first aid kits. Are the first aid kits properly stocked?

First Aid Kit Contents

The following was compiled by the American College of Emergency Physicians

- Acetaminophen, Ibuprofen, and aspirin tablets: For headaches, pain, fever, and simple sprains or strains. (Aspirin should not be used for relief of flu symptoms or given to children.)
- Ipecac syrup and activated charcoal: For treatment after ingestion of certain poisons. (Use only on advice of a poison control center or the emergency department.)
- Elastic Wraps: For wrapping wrist, ankle, knee, and elbow injuries.
- Triangular Bandages: For wrapping injuries and making an arm sling.
- Scissors with rounded tips.
- Adhesive tape and 2" gauze: For dressing wounds.
- Disposable, instant ice bags: For icing injuries and treating high fevers.
- Bandages of assorted sizes: For covering minor cuts and scrapes.
- Antibiotic ointment: For minor burns, cuts, and scrapes.
- Gauze in rolls and in 2" and 4" pads: For dressing wounds
- Bandage Closures: 1/4" and 1 ": For taping cut edges together.
- Tweezers: To remove small splinters and ticks.
- Safety pins: To fasten bandages.
- Rubber gloves: to protect yourself and reduce the risk of infection when treating open wounds.
- First Aid Manual
- List of emergency telephone numbers.

First aid kits for camps might be kept in cabin or tent areas, at the waterfront, in the kitchen and should be taken on all out-of-camp trips. Logon to www.adventurenetwork.com/Healthsafe/FirstAidcontent.html to get a list of some additional items for wilderness trips.

You indicated that your facility doesn't have an automated external defibrillator. An AED can restore a normal heart rhythm in victims of sudden cardiac arrest says the American Heart Association and save lives. Most of the machines are designed for use by nonmedical rescuers who have been properly trained. The AHA recommends the Heartsaver AED course.

For more information about how the AED works and why it's important to have them in public or private places where large numbers of people gather or people who are at high risk for heart attacks live, logon to www.aha-cpr.org/ecc_home.htm and click on "About AED."

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