Got people lining up to volunteer for your organization? They’ll bring a ton of great assistance, but they may also present some liability risks. Fear not—they’re risks you can manage with the right approach.

Worth the Risk

Volunteers keep many an organization running, but they bring potential liabilities

BY CHERIE TRAVIS AND BRAD POWERS

During 2010, more than 26 percent of Americans volunteered for an organization at least once. And with the economic climate bringing on budget crunches, chances are your organization may rely more and more on the services some of America’s 62.8 million volunteers, who provide more than 8 billion hours of service in the year.

Volunteers are a critical source of support for countless shelters and rescue groups. Being aware of the potential liability issues around volunteers should help organizations develop smart policies about training and safety—and the right kind of volunteer agreements!

This piece will focus on five important questions you should be asking yourself when it comes to reviewing your volunteer program: (1) Can a volunteer be held legally responsible by a third party for negligent actions performed while she is volunteering? (2) Can a shelter be held liable for the negligent actions of a volunteer? (3) Can a volunteer successfully sue a shelter for injuries incurred while volunteering? (4) What effect does a waiver of liability agreement have on these issues? And (5) do the liability rules change when the volunteer in question is a minor?

Is your shelter responsible for damages caused by a volunteer’s negligence?

When a potential volunteer walks into your shelter, you can assume altruistic intentions and little else. Every shelter should have a screening process to determine whether a volunteer would be a suitable fit with your organization. This screening process may include a volunteer orientation, questionnaire, reference check, and in-person interview. These screening policies, along with good training programs, are an animal welfare organization’s best
line of defense against the kind of accidents that can lead to lawsuits—remember the whole “ounce of prevention” rule? (See animalsheltering.org/volunteer_training for an in-depth article on screening and training issues.)

Once a volunteer gets through screening and training, they’ll eventually be expected to perform their assigned tasks. Whether it’s walking dogs, feeding animals, or cleaning cages, you will have to rely on that volunteer to perform the function carefully and properly. What happens if they don’t? What happens if they go to fill the water bowl of an animal, carelessly leave the hose running, and a visitor slips and falls on the slippery ground? What happens if the volunteer attempts to walk a dog who is too powerful, and the animal gets loose and bites someone? Or if the volunteer is transporting animals to an off-site adoption event and negligently runs a red light? There are a number of ways a volunteer’s carelessness could result in injury to a third party. But when will your shelter have to pay for their negligence?

You may think that the answer is simple: “If the volunteer is negligent, they are responsible, not the organization!” But the law does not agree. Under the Volunteer Protection Act, volunteers are largely immune from liability for their own negligence so long as it occurred while the volunteer was acting within the scope of their volunteer duties. The court imposed liability solely on the basis that the nonprofit knew the volunteer would be driving, and had assigned him the task of cookie delivery.

In Heikkinen v. United Services Automobile Association, the Wisconsin Court of Appeals upheld the $18 million verdict rendered in the lower court against a nonprofit organization after a volunteer negligently ran a red light and injured a man. The court reasoned that the nonprofit should be responsible because the volunteer was fulfilling the mission of the organization—visiting families that had recently suffered a loss—when the accident occurred.

These two cases are just part of a large body of case law that supports holding organizations liable for the negligent actions of their volunteers. The common thread in these cases is to hold the organization liable when it has actual control over the volunteer, or the right to control the volunteer, while they are performing a task within the scope of their volunteer duties.

The large verdict in the Heikkinen case shows how crippling the careless mistake of one volunteer can be. But many organizations can’t function without free labor from volunteers. The 62 million people who volunteered in 2010 provided approximately $173 billion worth of service. Some have argued that holding organizations liable will reduce the number of organizations willing to accept the services of volunteers, thereby reducing the availability of essential services that the volunteers would otherwise be administering. There are some courts that make a distinction between for-profit and nonprofit organizations when considering volunteer liability issues. However, the overwhelming majority of states agree that nonprofit organizations can be held financially responsible for volunteer negligence.

Can my shelter do anything to protect itself from liability for volunteer negligence?

So what can you do to limit your organization’s exposure to liability? Two words: liability waiver. The liability waiver is a mechanism that allows one person or entity to agree not to hold another party re-
sponsible for an injury, even if the injury was caused by that party.

Your shelter should have a liability waiver that every volunteer is asked to sign before beginning their service. Consult with a lawyer to craft a waiver that applies to the specific needs and peculiarities of your operation. All too often, we see waivers that are cut and pasted from other organizations and don’t provide maximum protection.

Let’s briefly touch on the basic legal components of a volunteer agreement:

1. Release Agreement – Also known as a waiver, a release is an agreement between two parties, where one party agrees to waive their right to sue the other party for legal claims as specified in the agreement. If you sign a release and later you are injured, the release agreement will generally prevent you from successfully collecting a judgment against the other party, even if their negligence caused the injury. Your shelter should have all volunteers sign an agreement that releases you from responsibility for any injuries incurred by the volunteer, including at the shelter and off the premises. So if a volunteer slips and falls in your shelter, even if it was through your organization’s own negligence, the release will likely protect you from a lawsuit. Courts commonly hold injured parties to the terms of the release agreement with the understanding that: (1) some activities are inherently dangerous to some degree, and (2) people should be free to engage in activities so long as they are not illegal and the participant is made aware of the risks. So make sure that your release agreement specifies all of the potential dangers and injuries involved with the work a volunteer will be doing.

2. Indemnity Agreement – Also known as a “hold harmless agreement,” an indemnity agreement is an arrangement between two parties where one party agrees to protect the other party against anticipated losses, claims, or lawsuits that may occur in the future. Your volunteer agreement should include an indemnity provision that causes the volunteer to hold your organization harmless for any legal claims that arise out of the volunteer’s activities. Unlike the release agreement, which addresses a claim between the two parties to the contract, the indemnity agreement anticipates claims that might be brought by a third party. So if your volunteer negligently allows an untrained dog to run free, and that dog bites a visitor at your adoption event, then under the indemnity agreement, the volunteer should have to reimburse your organization for any court awards to the injured visitor.

How much protection do release and indemnity agreements provide an organization?
The release agreement will come into play if the volunteer is injured and attempts to sue your organization for damages. Typically, courts are very willing to uphold the release agreement in favor of your organization, because the volunteer agreed to perform the task knowing that injury was a possibility. So if your release agreement is drafted properly, and your group wasn’t itself extremely negligent or purposeful in causing the injury, then the volunteer will usually be unable to collect a judgment against you.

Now what about situations where a third party is injured through the negligence of your volunteer? As noted, a group can be held responsible to a third-party victim for the negligence of a volunteer, even if the group itself wasn’t negligent. An indemnity agreement will come into play, and you can hold your volunteer responsible for any claims brought against you arising out of that volunteer’s actions. So how do we reconcile these two facts? The bottom line is that the victim is likely to sue both you and the volunteer. First, the volunteer will invoke the Volunteer Protection Act; the court will likely find the volunteer immune from liability. Even if the volunteer is found liable, they may be judgment-proof, which is why your organization was brought as a party to the suit in the first place (because, theoretically, you have more money than the volunteer).

If you are in a jurisdiction that holds nonprofit organizations liable for the independent negligence of their volunteers (and most of you are), then—assuming the victim can prove that the volunteer did in fact behave negligently and that negligence caused the injury—the court will likely find you responsible. You respond to the court that the indemnity provision in the volun-
A major judgment like *Heikkinen vs. USAA* would certainly cripple most any organization. Once the judge orders you to pay the victim, you could sue the volunteer for enforcement of the indemnity clause in the volunteer agreement. Legally speaking, the volunteer would likely be on the hook and have to reimburse you for the damages, but practically speaking, most volunteers do not have $18 million.

Since the victim still has a right to be compensated, the responsibility will ultimately fall back to you after your suit against the volunteer ends up in bankruptcy court. Obtaining liability insurance is a good way to protect your organization from things that may be out of your control. A few hundred dollars now may save you a lot of money and anxiety later.

**What if the volunteer is underage?**

If your shelter uses minor volunteers, you should have them sign a volunteer agreement with release and indemnity provisions, and additionally have their parents sign a release on behalf of their child. Usually, contracts with minors are voidable once the minor turns 18. This is why it is necessary to get the parent to also agree to waive the rights of their minor child.

You may wonder whether a parent’s waiver of rights for the child is enforceable when a minor brings his own claim. Courts are split on this issue, so you will have to consult the laws and precedents in your jurisdiction. Usually the court will uphold a parental release of liability where activities are public or nonprofit, such as community or school events. Alternatively, the courts are more willing to allow a suit to be brought against a for-profit company after

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a minor volunteer is injured, even if the parents have signed a waiver. In Zivich v. Mentor Soccer Club, a parent signed a waiver for a 7-year-old child to participate in a nonprofit organization’s soccer training program. The court upheld the waiver, preventing the minor or the parent from suing the nonprofit, reasoning that if these agreements weren’t upheld, several activities by nonprofit charities using volunteer services would no longer exist.

What about invoking an indemnity agreement when a minor's negligence causes injury to a third party? Just as your organization can be held liable if an adult volunteer is independently negligent, the same applies to a minor volunteer. Further, the court might find the indemnity agreement to be invalid against either the parents or the minor once the minor turns 18. And lastly, the victim might argue that your shelter was directly negligent by allowing a minor to volunteer for an activity that they clearly could not properly handle—another reason to carefully consider the tasks given to minor volunteers.

In summary, while much the same legal analysis applies to adult and minor volunteers, using minor volunteers opens an organization up to slightly more liability than when dealing with adults.

Ultimately, there is no way to completely safeguard your organization, but having good screening, training, and volunteer agreements in place is a vital and protective practice. Most animal welfare organizations benefit enormously from well-run volunteer programs, and if yours is one of those, just make sure you have a comprehensive volunteer agreement, screen and train your volunteers properly, and provide adequate supervision during their volunteer service. Know your volunteers’ limits, and don’t unnecessarily push them. If you have a small teenager with little animal handling experience, maybe you don’t want him walking your larger dogs. And at the end of the day, accidents happen. So focus on your mission, hope for the best, and make sure to carry comprehensive insurance.

For more volunteer management resources, go to animalsheltering.org.