



# “No good deed goes unpunished”

By Robert Ryan  
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Active community members often enjoy participating in various volunteer nonprofit organizations. While potential liability while volunteering may not be a glaring issue for said community members, if harm were to occur during a volunteer stint, it's a good aspect to be familiar with. After all, the saying that "no good deed goes unpunished" didn't become an adage for nothing.

To promote volunteerism, the Federal Volunteer Protection Act of 1997 (VPA) protects volunteers of qualifying nonprofit organizations from liability if certain requirements are met. First, the volunteer must be just that — a volunteer cannot receive any compensation other than reasonable reimbursement or allowance for expenses actually incurred or anything in lieu of compensation, in excess of \$500 per year. Services as a director, officer, trustee or direct service volunteer are included.

Second, at the time the harm occurred, the volunteer must be acting within the scope of the volunteer's responsibilities in the nonprofit organization. Third, the harm must not have been caused by willful or criminal misconduct, gross negligence, reckless misconduct or a conscious, flagrant indifference to the rights or safety of the individual harmed. Fourth, if required or appropriate, the volunteer must be properly licensed, certified or authorized for the activity. Finally, the harm may not be caused by the volunteer while operating any vehicle for which the

operator or owner must have an operator's license or insurance.

The VPA gives no protection for crimes of violence, hate crimes, sexual offenses, violation of civil rights or acts under the influence of intoxicating alcohol or drugs. VPA has no effect on the liability of the nonprofit organization or its civil action against the volunteer. For volunteers acting within the scope of his or her responsibilities to the nonprofit organization but not enjoying immunity under the VPA, limitations on non-economic losses (pain and suffering, impairment, mental anguish, loss of consortium or injury to reputation and punitive damages) are provided.

Nonprofit organizations covered by the VPA are 501(c)(3) tax exempt organizations and any not-for-profit organizations organized and conducted for the public benefit, primarily for charitable, civic, educational, religious, welfare or health purposes, which do not practice hate crimes.

Under Kentucky law, any person who serves as an uncompensated director, officer, volunteer or trustee of a tax-exempt, nonprofit organization is immune from civil liability when acting in good faith and within the scope of his or her official functions and duties, unless caused by willful or wanton misconduct. But this law has not been tested in court, and the Kentucky Attorney General's office has opined that this Kentucky law violates the Kentucky Constitution.

For Kentucky nonprofit corporations,

including incorporated homeowners' associations, protection is provided to officers and directors for their actions taken in good faith, on an informed basis and in a manner he or she honestly believes to be in the best interest of the organization, unless their action constitutes willful misconduct or wanton or reckless disregard for human rights, safety or property.

In a recent Kentucky Court of Appeals decision, a Crab Orchard grocery employee asked her husband to run an early morning errand to buy some sausage for the store. While driving his own car in excess of 100 miles per hour, the husband volunteer caused a high speed collision, killing himself and injuring the occupants of the other car. Declining to impose liability on the Crab Orchard grocery store owner for the volunteer driver's negligence, the Court focused on the lack of control over how the volunteer performed the task, finding that he drove his own vehicle, chose the route he traveled and could have decided not to complete the errand without any direct consequences to him.

The Court also noted important social and economic considerations to imposing liability for the negligence of a volunteer that could impact common social accommodations such as car pooling, running errands and providing gratuitous services to the elderly. Neither the VPA nor the Kentucky law would shield the volunteer husband for his reckless operation of his car.

When volunteering for an organization, ask about the organization's insurance

coverage. Typically, organizations carry primary general liability coverage in respect to claims that arise out of organization's activities, with the exception that the coverage may be excess over insurance carried by the volunteer on his or her own motor vehicle or watercraft. Some organizations require their volunteers maintain stated minimum amounts vehicle liability insurance on their personal vehicles or watercraft.

Specialized coverage for volunteer available to nonprofit organizations, which covers gaps in many commercial liability policies for claims by one volunteer against another, and, incidents occurring during travel between the volunteer's home and place of volunteer service. Volunteers receive some protection under the homeowner's or renter's policy. Since policies differ, volunteers should check with their insurance agent to determine extent their policies provide coverage.

Volunteerism is important, and questions of legal liability should not deter anyone from doing good work. But possibility of liability should not be ignored either. A few minutes on the phone with lawyer or insurance agent may help you arrange your volunteer activities to minimize the risk of liability.

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