

## Myths of Volunteer Risk Management, Part 3



By Hal Denton and Fiona Lally

**Resource Type:** Articles

**Topic:** Volunteer Risk Management

*This is the third in a series of articles concerning myths about volunteer liability. This installment covers the concept of agency as it relates to volunteer activities and how an organization should address its potential liability for the actions of its volunteers.*

### Myth 3

**Organizations can't completely control what volunteers do, so it's best to take a hands-off approach to managing volunteers.**

Some organizations rely entirely on volunteers as if they were staff, while others may not know how their volunteers carry out their services from day to day, or even who or where they are. This raises a number of risk management issues, particularly since there are so many different kinds of volunteers and volunteer activities. As always, the first step is to identify the range of volunteer-related risks. Once that has been done, assessing the nature of those risks can seem to be a daunting task. However, assessing these risks is very important when you have volunteers.

Organizations can be and are held responsible for the actions of their volunteers, and are expected to reasonably foresee and address the risks associated with using them, even though these individuals are not paid to work for the organization.

One legal doctrine behind this is agency. Agency is tied to the notion of control. If an organization has or should have control of a volunteer, it can be held responsible for his or her actions.

A volunteer can also bind the organization to contracts, or create expectations of safety or service delivery, which can create other kinds of organizational liability. This can occur when an individual has apparent authority to act for an organization, which can also create liability. A hands-off" approach to someone whom others see as a representative of your organization is unlikely to be the best risk management strategy. And if that person is deemed to be an agent, you may find that you were expected to have considered the risks involved, and may be considered negligent for having failed to do so.

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More than one organization has doubted their ability to tackle adequately the big job of volunteer risk management. If we don't address this issue, some have said, we can't be held responsible if we don't have the ability to address it well enough. It is also not uncommon for an organization to point to its own good loss record and cite that as a reason not to implement volunteer risk management. Why, some have asked, should we change something that is going along fine?

Experience indicates that even though there are different legitimate ways to manage volunteer liability, a not-for-profit ignores the presence of volunteer risk at its great peril. At the very least, the kind of liability which your volunteers present has to be evaluated. Waiting for a court to evaluate it for you is foolhardy.

Two points are worth noting here: First, previous good loss experience that an organization has had with its volunteers does not mean that there is not an agency issue. Organizations routinely face this risk as a part of doing business when they use volunteers and simply may not have known about it. Waiting for a loss to occur may be necessary to focus attention on the issue, but the risk is already present.

Second, a volunteer organization can be held responsible for the actions of volunteers it has some control over, even if the organization does not consider those people to be its proper volunteers. For example, organizations can use different kinds of volunteers alongside their established volunteer base-some for one-day-only or special events, others "borrowed" from corporate sources or from other volunteer organizations, and still others for certain specialty activities, such as professional services. Organizations are often surprised to discover the extent to which they could be held responsible for volunteer activities they never considered to be part of their routine operations, or that they did not believe they could effectively control.

This means that an organization needs to identify who its agent/volunteers might be, what they do, and how they do it, as part of assessing and managing risk. This process can help to define who should be considered a volunteer within your organization, and therefore what kind of control or influence you should - or should not - be exercising over them.

What represents a "level of control"? Determining the manner, the means and the schedule for completing certain activities are more obvious examples of control. However, providing insurance coverage and training for volunteers may be enough to create an agency relationship. Any person considered an agent of an organization can create liability through his or her actions. Taking a "hands-off" approach to an agent makes little sense, and prudent risk management dictates that an appropriate level of control should be exercised over these individuals.

If, however, you determine that certain persons should not or cannot be considered agents of your organization, then care should be taken not to engage in activities that could make them appear to be agents. Even individuals who are involved in your organization in other ways, such as clients, may be deemed to be agents if insurance, training or other organizational actions indicate a level of control sufficient to create an agency relationship. Both the facts and the applicable law must be evaluated to determine whether such a relationship exists. Accordingly, this is a good subject for legal analysis, and one to take up with your organization's counsel.

The result is that "hands-on" or "hands-off" volunteer risk management should be a function not of the way the organization chooses to operate or of its loss experience, but of the kind of volunteer work it uses. A good point to remember, however, is that volunteers themselves can be made into an excellent source of risk management skill. People who are already working in an agency capacity for your organization can be given the job of helping to manage the risk control required by other volunteer agents-this does not need to be a job done entirely by employees. It is, after all, one of the most important activities a volunteer can do to protect the vitality of the organization's mission.

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([Part 1](#) and [Part 2](#) of this series are also available online.)