





Liability Basics

- Tort
- Categories of tortious conduct:
 intentional conduct
 - negligence
 - strict liability



Important Terms

- Negligence
 - Inadvertence, inattention, thoughtlessness, incompetence
- Gross Negligence
 more than ordinary negligence but less than recklessness



Additional Terms

- Direct liability
- Vicarious liability
- Duty of care
- Misfeasance
- Nonfeasance

Purpose of Tort Law Three goals: To ensure that persons who suffer a loss or harm resulting from another's conduct receive appropriate compensation

- To make certain that the cost of harm is borne by persons who cause it
- To encourage members of our society to exercise care



Proving Negligence

- Duty duty to exercise care
- Negligence violation of duty
- Causation connection between action or inaction and resulting harm
- Damages loss or damage





How Far Must You Go?

- Weighing gravity of potential harm against cost of preventive measures of alternative conduct
- The law doesn't require that a nonprofit:
 - take every possible precaution to prevent foreseeable harm
 - curtail every activity in which harm could result
 - · exhaust resources to prevent harm



How Far Must You Go?

- Factors to consider:
 - * Social value of activity
 - * Appropriateness of conduct in question
 - * Feasibility of risk-minimizing activity, cost and safety of alternative course of action
 - Whether providing a warning would be sufficient to avoid harm



Board Liability

- Duty of care
- Duty of loyalty
- Duty of obedience



Board Liability

- What's required?
 - Participation
 - Tough questions
 - Review materials
 - Avoid conflicts of interest

 Know what protection is available... volunteer protection laws





Claims Against Nonprofits

- Who is suing?
- How common are lawsuits against nonprofits?
- What allegations?
 - Employment Actions Negligent Supervision
 - * Abuse (client on client versus caregiver on client)



What can your nonprofit do to avoid being sued?

- Step #1: Carefully consider all commitments
 - contracts you sign have you read them?
 - promises to employees
 - funding agreements

being sued?

What can your nonprofit do to avoid

• Step #2: Adopt reasonable (practical) policies and procedures, and enforce them consistently



What can your nonprofit do to *avoid* being sued?

- Step #3: Teach your personnel to look for and address obvious hazards
 - loose carpeting
 - manhole cover
 - your premises / premises being used by your nonprofit



What can your nonprofit do to *avoid* being sued?

- Step #4: Obtain legal advice sooner than later...
 - Employment issues
 - * Contracts
 - Accidents, injuries

What are the areas of vulnerability?

- Contracts
- Partnerships
- Employment Relationship
- Participant injury
- Automobile



Claims Against Nonprofits

- Frequency: Auto, slips and falls
- Severity: Abuse
- Both: Employment-related claims





Step 1 Respond with compassion



- express concern
- use common courtesy
- offer reasonable assistance
- don't promise to pay



Step 2 Understand the process



- plaintiffs and defendants
- summons
- complaint



Step 2 (continued)

- Answer
- Discovery
- Interrogatories
- Requests for production
- Requests for admissions
- Depositions



Statutes of Limitation

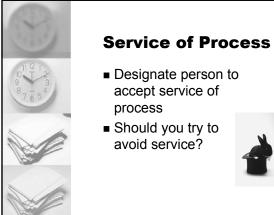
- Generally
 1-7 years
- Special rules for minors



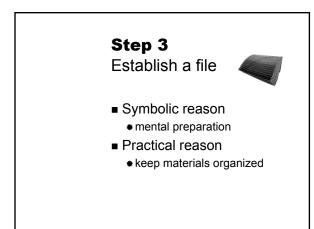


Which court?

- Amount in controversy
- Nature of the claims
- Location of the parties
- Candidates for federal court:
 out-of-state parties and over \$75,000
 alleged violation of federal law









Step 4

Convene your defense team

- Retained counsel
- Appointed counsel
- Small is best



Step 5 Communicate with constituencies

- Keep the staff informed
- Keep the board and key volunteers up to date
- Inform donors and supporters as necessary

Step 6

Cooperate with your insurance company, broker and counsel

- Send materials to the insurer
- What is a reservation of rights letter?
- Retained counsel



Step 7 Mind the clock



20-30 daysExtensions may be granted

Answer due in

- Note time and date of service
- Default judgments
 - proof of service + deadline
 - limited time to set aside judgment
 - possibility that coverage will be voided



Step 8 Answer the media

- Designate a media spokesperson
- Make sure everyone knows who is and isn't authorized to speak
- Do not admit wrongdoing
- Never say, "no comment"
- Stay calm and "on message"
- Deliver a positive message
- Show concern and compassion



Step 9 Pursue the best outcome

- Is a "happy ending" possible?
- Consider settlement options and implications



 Monitor the case



Step 10 Incorporate lessons learned

- Take advantage of expert help
- Stay organized
- Remember
 - common sense
- Keep your mission at the forefront







Nonprofit Risk Management Center

- Free technical assistance to nonprofits on risk management, liability and insurance issues
- www.nonprofitrisk.org
- Melanie@nonprofitrisk.org
- MyRiskManagementPlan.org
- RiskManagementClassroom.org
- Nonprofit CARES.org