

# VOLUNTEER LIABILITY

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# IS THIS REALLY AN ISSUE ?

No good deed goes unpunished.

- Clare Boothe Luce

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# WHAT IS A VOLUNTEER ?

- IF YOU ARE PERFORMING A SERVICE FOR WHICH YOU ARE NOT COMPENSATED
  - "COMPENSATION" DOESN'T HAVE TO BE MONEY
- IN THE EMERGENCY MANAGEMENT WORLD
  - IF YOU AREN'T A GOVERNMENT EMPLOYEE

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## LIABILITY

- **YOUR ACTIONS FAILED TO MEET A STANDARD OF CARE**
  - NEGLIGENCE (TORT)
  - STATUTORY "DUTY" DOES NOT NECESSARILY CREATE LIABILITY
- **YOU INTENTIONALLY HARMED SOMEONE**
  - INTENTIONAL TORT, TRESPASS, CRIME, CIVIL RIGHTS VIOLATION
  - RECKLESS BEHAVIOR

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## STANDARDS OF CARE

- REGULATIONS
- GOVERNMENT GUIDANCE
- NIMS/NCP
- PLANS & PLANNING PROCESS

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## LIABILITY AS A VOLUNTEER

- **WORKERS vs MANAGERS**
  - CHAIRS & BOARD MEMBERS OF VOLUNTEER GROUPS
- **DURING A DISASTER vs PLANNING, EXERCISES, MEETINGS AND BAKE SALES**

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## VOLUNTEER LIABILITY TO OTHERS

### ▪ LIABILITY FOR INJURIES TO OTHERS

(THE GENERAL RULE IS THAT YOU ARE ALWAYS RESPONSIBLE FOR YOUR OWN ACTS.)

- NEGLIGENCE
- ASSAULT
- PROPERTY DAMAGE
- FAILURE TO WARN
- CRIMES

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## MANAGERS vs VOLUNTEERS

- NO DOUBT A HIGHER DUTY
  - TO THE VOLUNTEER
  - TO THE PEOPLE IMPACTED BY THE VOLUNTEER
- VICARIOUS LIABILITY FOR MANAGERS AND ORGANIZATIONS
- CAN HAVE LIABILITY EVEN IF THE VOLUNTEER DOES NOT

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## GOVERNMENTAL IMMUNITY

- EXTENSIVE ESPECIALLY DURING A DISASTER
- GOVERNMENT EMPLOYEES WELL PROTECTED
  - SCOPE OF EMPLOYMENT
- EXCEPTIONS
  - MALICIOUS/BAD FAITH
  - WANTON OR RECKLESS
  - CRIMINAL
  - CIVIL RIGHTS
  - SPECIFIC STATUTES (licenses etc)

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## OUTCOMES IN COLORADO

- DURING A DISASTER VOLUNTEERS OK UNLESS INTENTIONAL ACT OR CRIME
- MANAGERS MAY NOT BE OK EVEN IN A DISASTER
- PROTECTION FOR BOTH DURING EXERCISES AND TRAINING IFFY UNLESS YOU USE THE STATE STATUTES

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## SPECIALIZED COLORADO STATUTE 24-32-2605(1.5)

- No private organization or any of its officers, officials, directors, employees, or volunteers, when working under the direction of a local emergency planning committee or state or local fire or law enforcement agency and when engaged in emergency planning, training, or response activities regarding a hazardous material release, threat of release, or act of terrorism, shall be liable for the death of or injury to any person or for the loss of or damage to property or the environment resulting from the hazardous material release, threat of release, or act of terrorism, except for willful and wanton acts or omissions.

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## WORKERS COMP

- INJURED VOLUNTEER LIKELY NOT
  - DURING A DISASTER POSSIBLY
  - PROVING THAT YOU WERE "OFFICIAL" CAN BE HARD
  - LIABILITY OF MANAGERS
    - IF YOU AREN'T COVERED BY WORKERS COMP YOU CAN SUE ANYONE RESPONSIBLE
- VOLUNTEER ORGANIZATIONS CAN INSURE THEMSELVES

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## GOVERNMENT LIABILITY FOR VOLUNTEERS

- DOES GOVERNMENTAL IMMUNITY APPLY ?
  - DURING DISASTER LIKELY YES
  - OTHERWISE BEWARE THE CLEVER LAWYER
- AT SOME POINT A VOLUNTEER BECOMES AN "EMPLOYEE"
- GOVERNMENT EMPLOYEES WORKING WITH VOLUNTEERS OUTSIDE SCOPE OF THEIR EMPLOYMENT

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## INSURANCE, WAIVERS AND RELEASES

- EVEN VOLUNTEER GROUPS CAN GET INSURANCE AND SHOULD
  - SCOPE OF COVERAGE IS KEY
    - HAZARDOUS CHEMICALS & PRIVATE CARS
- WAIVERS AND RELEASES NOT VALID UNLESS COMPLETE AND KNOWING
  - USE THEM BUT BE CAUTIOUS

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## FINAL WORD

- THE PEOPLE THAT ARE REALLY VULNERABLE ARE "MANAGERS" OF VOLUNTEER GROUPS
- LOOK FOR WAYS TO PROTECT THEM THROUGH COOPERATIVE AGREEMENTS OR AUXILIARY STATUS

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