



This article presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.

LIMITATION ON VOLUNTEER LIABILITY

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The issue of volunteer liability is a major consideration for Georgia nonprofits. Virtually all nonprofits rely on the efforts of volunteers to assist them in carrying out their missions. Volunteers who agree to assist nonprofits take on certain responsibilities, and both the nonprofit and volunteer can be held liable if these responsibilities are not handled with care. Accordingly, it is important that Georgia nonprofits develop a basic understanding of the legal principles applicable to volunteer efforts and how the nonprofit could be held liable for the volunteers' actions.

The Federal Volunteer Protection Act Immunizes Volunteers Against Liability To Third Parties

The Federal Volunteer Protection Act immunizes volunteers (defined as those who receive no more than \$500 annually for helping 501(c)(3) and 501(c)(4) nonprofits) from personal liability to third parties for negligent acts or omissions committed while acting within the scope of their duties as volunteers. The Act only provides protection to the individual volunteer, and does not immunize or otherwise limit or affect the liability of the nonprofit organization itself.

The Volunteer Protection Act does not immunize a volunteer against any and all responsibility for his or her conduct. Indeed, the Volunteer Protection Act doesn't provide immunity to liability where the alleged harm or injury caused by a volunteer resulted from:

- willful or criminal misconduct;
- gross negligence;
- reckless misconduct; OR
- conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer.

Among the kinds of misconduct specifically excluded from the application of the Volunteer Protection Act are violent crimes, hate crimes, sexual offenses, and violations of federal or state civil rights laws. Additionally, the Act does not (i) protect a volunteer from liability for his or her conduct while under the influence of alcohol or drugs, or (ii) cover a volunteer where the harm or injury results from the operation of a motor vehicle.

For example:

- A nonprofit directs its volunteer to unload folding chairs and tables from a truck owned by a third party. While unloading the tables and chairs, the volunteer negligently damages the truck. The Volunteer Protection Act insulates the volunteer against liability for damages to the third party.
- A nonprofit directs its volunteer to unload folding chairs and tables from a truck owned by a third party. Prior to the volunteer unloading the tables and chairs, the third party warns the volunteer that he will damage the truck if he attempts to remove the items by himself. Notwithstanding this explicit warning, the volunteer unloads the tables and chairs by himself and damages the truck in the process. The Volunteer Protection Act does not apply to the volunteer's conduct because the volunteer acted recklessly in disregarding the third party's warning.
- A nonprofit directs its volunteer to unload tables and chairs from a truck owned by a third party. The volunteer is intoxicated but nevertheless attempts to unload the truck, damaging it in the process. The Volunteer Protection Act does not apply to the volunteer's conduct.

Georgia Law Immunizes Volunteers Against Liability To Third Parties

Georgia law provides additional protections for specific classes of volunteers, extending immunity against liability beyond the provisions of the Federal Volunteer Protection Act. Specific protections afforded to volunteers in Georgia include:

- immunity against liability for members and directors of nonprofits and other charitable organizations, acting in their official capacity;
- immunity against liability for volunteers assisting nonprofits and other charitable organizations with sport and safety programs;
- immunity against liability for volunteers assisting nonprofits and other charitable organizations with emergency and disaster relief efforts, where coordinated by an appropriate state agency; and
- immunity against liability for volunteers assisting charitable organizations with the transportation of senior citizens.

When a volunteer acts in good faith and within the scope of his or her assigned duties, the various Georgia statutes concerning volunteer liability protect volunteers from liability. However, a volunteer may be held liable under these statutes for damages or injuries resulting from willful or wanton misconduct or gross negligence.

- Willful or wanton misconduct means deliberate or intentional wrongdoing or reckless disregard of the rights or safety of others, accompanied by the knowledge that damage or injury will likely result.

- Gross negligence is negligence that shows a total or near total disregard for the rights and welfare of others or for the consequences of an act.

If the volunteer is held liable despite the considerable federal and state protections available, the volunteer will be liable only for the amount of noneconomic loss, e.g., pain, suffering, inconvenience, etc., directly attributable to his or her proportionate responsibility or fault. Like the Federal Volunteer Protection Act, the Georgia statutes do not immunize or otherwise limit or affect the liability of the nonprofit organization itself.

Georgia Nonprofits May Be Held Liable For Injuries Caused By Volunteers

Georgia nonprofit organizations have similar protections against liability for injuries caused by their volunteers, but some exceptions exist.

A nonprofit may be held liable to a third party for the acts of a volunteer:

- where the volunteer acts at the nonprofit's direction; OR
- where the third party reasonably believes that the volunteer has the authority to act on the nonprofit's behalf *even though the volunteer himself is not liable to the third party.*

For example:

- A nonprofit directs its volunteer to unload tables and chairs from a truck owned by a third party. While unloading the tables and chairs, the volunteer negligently damages the truck. The volunteer is immune from liability under the federal Volunteer Protection Act, but the nonprofit may be liable to the third party.
- A volunteer regularly picks up chairs and tables for the nonprofit from a third party. The volunteer visits the third party without the nonprofit's knowledge and requests that the third party provides him with tables and chairs, which the volunteer uses for his own purposes. The volunteer may be liable to the third party to the extent that the volunteer acted willfully, criminally, recklessly or with willful or wanton indifference. The nonprofit may also be liable because the third party reasonably believed that the volunteer had authority to act on the nonprofit's behalf in picking up the chairs and tables.

Even though nonprofits may be held liable to third parties for the conduct of volunteers where the volunteers may not be directly liable, the nonprofit may be able to claim charitable immunity from civil suits.

A nonprofit may not claim charitable immunity in connection with the conduct of a volunteer, however, where the nonprofit failed to exercise ordinary care in selecting and retaining the volunteers.

The Federal Volunteer Protection Act and the various Georgia statutes immunizing volunteers against liability only apply to damages or injuries to *third parties*. A volunteer may be held liable to a nonprofit for financial loss incurred by the nonprofit in connection with a claim filed by a third party. For example:

- A volunteer regularly picks up chairs and tables for the nonprofit from a third party. Without the nonprofit's knowledge, the volunteer visits the third party and asks that the third party provide him with chairs and tables, which the volunteer then uses for his own purposes. The nonprofit may be held liable to the third party, but the nonprofit can sue the volunteer to recover the damages paid to the third party.

Georgia Nonprofits Should Institute Appropriate Risk Management Measures

The issue of volunteer liability in Georgia can be complicated. Nonprofits should follow appropriate risk management guidelines in order to minimize potential financial loss.

Nonprofits should:

- maintain appropriate insurance coverage, including general liability insurance and director and officer insurance, in sufficient amounts to cover the organization and its volunteers;
- perform background checks on volunteers possessing fiduciary responsibilities, working with vulnerable clients such as children and the elderly, and elsewhere as necessary;
- exercise due diligence in recruiting and engaging volunteers; and
- provide volunteers with proper supervision and training.

The institution of these and other risk management measures is key to minimizing unnecessary financial loss, and thus critical to the nonprofit's ability to continue to fulfill its mission.