

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

Rules of the Road: Managing the Risks of Volunteer Drivers

By Sam Snider and Sarah Moy, McDermott Will & Emery LLP

To perform their services, many nonprofits rely on volunteers to drive. The circumstances in which a volunteer will drive vary widely, from transporting supplies to taking senior citizens to doctors' appointments. Regardless of the reason volunteers get behind the wheel, nonprofits should develop a plan to mitigate the risk of having a volunteer on the road on its behalf. There are certain steps nonprofits may take to ensure the competency of volunteer drivers and assess their potential liability in the event of an accident. This article addresses only general liability and does not address any service-specific legal requirements that might arise (such as car seat/booster seat requirements when transporting children).

This article assumes that the driver is a volunteer (not an employee) of the nonprofit who gets into an accident with a third party while driving to perform volunteer services for the nonprofit. Therefore, this article will describe how nonprofits should verify that the volunteer meets certain minimum requirements as a driver and plan its insurance coverage.

Checklist for New Volunteer Drivers.

This checklist will help nonprofits verify basic information about the volunteer to ensure the nonprofit has exercised care to allow only qualified drivers to drive on its behalf and reduce the risk of auto accidents by excluding some volunteers from driving.

1. *Verify Driver's License.* Verify that the volunteer has a current, valid driver's license.
2. *Check Volunteer's Driving Record.* Prior to allowing any volunteers to drive, nonprofits should establish a policy outlining which driving infractions will disqualify a volunteer from driving for the nonprofit. While a full background check may not be necessary in all circumstances, the nonprofit should review the volunteer's driving record to determine compliance with the policy. Volunteers may request a driving record from the state that issued their driver's license and submit it to the nonprofit.
3. *Vehicle Documentation.* If the volunteer is providing his or her own vehicle, obtain proof of up-to-date vehicle registration and adequate personal auto insurance from the volunteer.
4. *Written Standards of Conduct.* Consider developing written standards of conduct for volunteer drivers stating that the volunteer will:
 - a.) comply with all traffic laws and regulations,

Dated: 3/30/2021

www.pbpatl.org

© 2021 Pro Bono Partnership of Atlanta, Inc. All rights reserved.

- b.) notify the nonprofit of any traffic citations received whether driving for the nonprofit or on the volunteer's own time (to verify continuing compliance with the nonprofit's driving infractions policy),
- c.) cooperate with the police, the nonprofit, the nonprofit's attorneys and the relevant insurance company in the event of an accident,
- d.) not drive under the influence of drugs or alcohol, or if the driver believes that any other factors such as fatigue would make driving unsafe,
- e.) abide by any additional guidelines for volunteer drivers, such as whether or how many passengers are permitted,
- f.) if the volunteer is providing his or her own vehicle, maintain the vehicle in good condition, and
- g.) if the volunteer is driving a vehicle owned by the nonprofit, use the vehicle only for the purpose of performing the volunteer services for the nonprofit and not for personal matters.

Provide a copy of the standards of conduct to each volunteer before permitting him or her to drive. These written standards of conduct are not a contract, but they will inform volunteers of the nonprofit's expectations.

Insurance Considerations.

As discussed in the checklist for new volunteer drivers, if the volunteer is providing his or her own vehicle, the nonprofit should verify that the volunteer has adequate personal auto insurance meeting at least the minimum requirements under Georgia law. Georgia requires minimum liability insurance limits of (a) for property damage liability, \$25,000 per incident and (b) for bodily injury liability, \$25,000 per person and \$50,000 per incident. Georgia does not require physical damage insurance.

Let's briefly review those different types of auto insurance coverage. Liability insurance pays for personal injury or property damages to others when the policyholder is ruled to be at-fault. Physical damage insurance pays for loss or damage to the policyholder's own vehicle. There are two types of physical damage insurance: (y) collision insurance covers losses associated with vehicle collisions and (z) comprehensive insurance covers theft, vandalism, and fire-related losses. The nonprofit may also consider purchasing non-owned auto liability insurance, as discussed below.

If the nonprofit is providing the vehicle, it should review its own policy to determine its coverage and any gaps in coverage. For example, if the nonprofit is concerned that its vehicle may be stolen, it should ensure that it has comprehensive physical damage insurance, even though it is not required under Georgia law.

Georgia is a "fault" auto insurance state, which means that the at-fault driver is liable for any personal injury or property damage resulting from an accident. The at-fault driver's insurance policy will be used first to cover the losses of these injuries and damages.

If the Volunteer is At Fault.

In the event that the volunteer is at fault, the insurance that applies will depend on who owns the vehicle that the volunteer was driving. The nonprofit's auto insurance will apply to any accidents involving vehicles owned by the nonprofit, regardless of who was driving.

If the volunteer is driving his or her own vehicle, the volunteer's personal auto insurance will initially cover both the volunteer and anyone named in a lawsuit arising out of the use of the vehicle. Therefore, a nonprofit may initially be covered for an accident that occurs while the volunteer is driving his or her personal vehicle for the nonprofit. However, if the damages exceed the driver's policy limits, a nonprofit may face exposure if named in a lawsuit resulting from the accident. To mitigate this risk, nonprofits may consider purchasing non-owned auto liability insurance. This insurance will cover the nonprofits' liability for accidents caused by a volunteer driving his or her personal vehicle on the nonprofits' behalf. It will not protect the volunteer, but rather covers the nonprofit to the extent that the claim exceeds the volunteer's auto policy limits.

If the Third Party is At Fault.

If the third party is at fault, that person's auto insurance will be exhausted first to cover any losses. Although Georgia requires all drivers to have liability insurance to drive, some drivers may either not follow the law, mistakenly allow their coverage to lapse, or carry an insufficient amount of insurance to cover damages. If this is of particular concern to the nonprofit, the nonprofit may further opt to purchase uninsured motorist ("UIM") insurance, which would protect the nonprofit when the volunteer gets into an accident and the other driver is at fault. There are two types of UIM coverage: "traditional" coverage and "new" coverage:

- a.) Under *traditional coverage*, the UIM coverage is diminished by the other driver's available insurance. In other words, the UIM coverage is set off by the amount available under the at-fault driver's liability policy. For example, if the at-fault driver's policy has coverage of \$25,000 and the UIM policy has coverage of \$30,000, then \$25,000 of the UIM policy is set off by the at-fault driver's policy and only \$5,000 is available.
- b.) Under *new coverage*, the UIM coverage is available to the full extent of the UIM policy after the at-fault driver's policy is exhausted. In the previous example, where the at-fault driver's policy has coverage of \$25,000 and the UIM policy has coverage of \$30,000, then the full \$30,000 under the UIM policy is available after the at-fault driver's \$25,000 policy is exhausted to cover additional losses for a total of \$55,000.

Additional Considerations for Volunteers Transporting Individuals

If a volunteer is transporting other individuals, there are these additional considerations:

1. Transporting Minors, Elders or Other Vulnerable Populations. In addition to checking the volunteer's driving record, a broader background check should be considered if the volunteer will be transporting members of vulnerable populations, such as children or the elderly.
2. *Transporting High-Risk Passengers* All volunteers should sign volunteer liability releases prior to driving. If a volunteer may transport passengers that pose a higher risk (such individuals with

violent histories or animals that have a history of unpredictable behavior), the nonprofit should verify that their existing volunteer liability release is sufficient to put the volunteer on notice and minimize risk to the organization.

3. Transportation During COVID-19. If volunteers will be driving with individuals outside of their household, a nonprofit should encourage safe practices per [CDC guidelines](#) for shared transportation, including the use of masks.

Conclusion.

Volunteer drivers perform an important service for many nonprofits. Nonprofits do not need to shy away from allowing volunteers to drive out of fear that the risks of potential liability are too great. So long as the nonprofit (a) develops a plan to verify that volunteers meet certain minimum qualifications to drive, and (b) considers its potential liability and structures its insurance coverage accordingly, the nonprofit will be well-positioned to manage the risks of its volunteer drivers.