



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.

Waivers of Liability and Nonprofit Volunteers

Nonprofit organizations often utilize volunteers to perform vital services for various community members. Depending on the nonprofit's mission and work, the organization may require its volunteers to risk injury or be exposed to hazardous conditions to ensure the community is served effectively. For example, volunteers who help nonprofits build and maintain community gardens likely need to use a variety of equipment, such as shovels, pitchforks, rakes, and wheelbarrows, and in so doing, risk injury from using such equipment. Accordingly, nonprofits should consider requiring volunteers to sign valid waivers of liability to protect the organization and to continue providing a structured opportunity for volunteers to serve the community.

I. What is a waiver of liability?

A "waiver of liability" is a written agreement between the volunteer and the nonprofit where the volunteer agrees to do two things: (1) accept full responsibility for the risk of injury inherent in the volunteer activity and (2) release the nonprofit from liability for any injuries sustained while performing the volunteer activity. Waivers of liability commonly shield nonprofits from future legal claims that arise from a volunteer performing activities for the organization. This protection is often critical to nonprofits when legal claims are unexpected or unforeseen, and the nonprofit does not have adequate insurance coverage to address the claims. Thus, waivers of liability can be critical to ensure the nonprofit can continue its vital work in service of the community.

To offer the most protection, waivers of liability should be in writing, and volunteers should read and sign the waiver prior to performing any volunteer activities. Since e-signatures are valid under Georgia law, nonprofits should consider providing digital waivers of liability and collecting e-signatures from volunteers to sign the digital waiver. By signing (or e-signing) the written waiver, the volunteer is agreeing to not seek monetary damages against the organization if they are injured while performing volunteer activities. Regardless of whether the organization provides waivers on paper or electronically, nonprofits should develop and adopt adequate [record retention best practices and procedures](#) to retain copies of any important documents, including signed waivers of liability for each active volunteer.

II. Are volunteer waivers necessary?

While nonprofits are not required to use waivers of liability, they can provide critical protection to nonprofits and their work in the community. In fact, these waivers are often used to protect a nonprofit's finances by ensuring that any funds or capital the nonprofit has accrued are applied to support the nonprofit's charitable mission and activities as much as possible, rather than being used to address legal claims and to pay legal costs and fees. Importantly, the benefits of utilizing waivers of liability are not limited to solely protecting the nonprofit's finances. There are several additional benefits, including:

- providing an opportunity to openly discuss the nonprofit's work and the risks inherent in the nonprofit's volunteer activities with potential volunteers; and

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- reducing the amount of time the nonprofit's executive team spends discussing or responding to questions about liability.

One concern nonprofits may have with waivers of liability is requiring its volunteers to give up their legal rights to bring claims against the nonprofit for injuries sustained while performing activities for the nonprofit. This concern is well-taken – especially since volunteers often support the nonprofit's work and mission with their own time, money, and resources. However, honoring volunteers and protecting the organization need not be mutually exclusive goals. Although a waiver of liability may result in some individuals declining to volunteer with the organization, utilizing a waiver of liability can be a way to attract and identify a core group of volunteers dedicated to the nonprofit's mission and work without exposing the organization to liability unnecessarily. Also, utilizing a waiver of liability can provide ample opportunities to discuss the nonprofit's mission with volunteers and to answer any questions they may have.

To help facilitate incorporating a waiver of liability into practice, it may be helpful for the nonprofit to implement an orientation program for all new volunteers. During the orientation, the nonprofit should require the volunteer to read and sign the written waiver of liability prior to performing any volunteer activities. The orientation would also provide a focused opportunity to discuss the parameters of the upcoming volunteer activity, to provide updates regarding the nonprofit's work and mission, and to answer any questions from volunteers.

III. What should be in a waiver of liability?

A waiver of liability can take a variety of forms, and what is appropriate for one may not be appropriate for another. A sample template is attached to this article, but a nonprofit should consult with an attorney as to what is needed for the specific organization. At a minimum, a waiver will be valid in Georgia so long as it complies with the following requirements:

- it is in writing;
- it is clear and unambiguous in identifying and describing the risks inherent to a volunteer activity;
- it is voluntarily signed by the adult volunteer or parent/legal guardian; and
- it protects against simple negligence only.

In contrast, even if well-drafted and signed by a volunteer, a waiver of liability can never protect a nonprofit from "gross negligence" or "recklessness." Further, waivers of liability are not valid if they violate public policy, *i.e.*, if any of the following circumstances are true:

- it is declared invalid by the Georgia General Assembly;
- it is illegal; or
- it is entered into to enforce an illegal or immoral agreement.

For a stronger waiver, we suggest it additionally include:

- The name of the volunteer and the nonprofit;
- A clear statement that the volunteer is not an employee of the nonprofit;
- "Waiver and release" language stating the volunteer releases, forever discharges, and holds harmless the nonprofit from all liability and waives all claims the volunteer may have. It is best to draft this release language broadly to include as many claims as possible, such as for bodily injury, personal injury, illness, death, or property damage;

- Language that the volunteer releases the nonprofit from liability for claims arising from medical treatment rendered to volunteers following an injury;
- Language that the volunteer understands the activities involved and that he or she “assumes the risk” of any damages, injury, harm, or death in connection with the volunteer activities;
- A statement that the nonprofit does not provide any financial assistance, including insurance for the volunteer, unless it has been agreed otherwise; and
- A statement that the agreement is governed by Georgia law, rather than a state that may not enforce liability waivers.

Waivers of liability may also include a variety of other clauses that protect the nonprofit, such as a “media release” clause that grants to the nonprofit all rights in media made during the volunteer’s participation in the activities.

Additionally, nonprofits should pay particular attention to how the activities covered by the waiver of liability are described. If the waiver only covers injuries related to certain listed activities, then the waiver may not be valid if a volunteer’s injury occurs during another activity not listed in the waiver. For example, if a waiver states that it applies to injuries that occur specifically at a clean-up site, it may not then be valid against an injury that instead occurs as the volunteer is bussed by the nonprofit to the clean-up site. Nonprofits should be careful that the activities language described in the waiver of liability is broad enough to include everything the nonprofit intends.

Waivers of liability may be combined with other information for volunteers, such as a volunteer application or emergency contact information, for example. If the nonprofit chooses to include additional information with its waiver form, the nonprofit should ensure that the waiver and release language is very clear, difficult to overlook (ie – capitalized or bold letters), and is the focus of the document, since it is the most important part.

IV. Volunteer insurance.

Generally, workers compensation insurance held by a nonprofit does not cover volunteers (although note a volunteer may be covered if they hold another role with the nonprofit as well, such as a director). This being the case, a nonprofit should also consider discussing with its insurance broker what policies are available to cover claims related to injuries that occur within the scope of a volunteer’s work for the nonprofit. Having both a waiver of liability and insurance better protects a nonprofit .

For example, a general liability insurance policy covers common business risks, such as liability related to injuries or property damage, due to negligent acts or omissions of the nonprofit. However, this type of insurance is often intended to cover third party injuries, not volunteers or employees of the nonprofit. So, depending on the policy’s specifics, the purchased insurance policy may not cover expenses of an injured volunteer who sues the nonprofit.

A nonprofit should also consider purchasing volunteer accident insurance. Similar to traditional medical insurance policies, this type of policy covers medical costs for volunteers injured while working on behalf of the nonprofit on a no-fault basis, meaning the policy does not require that the nonprofit be at fault for the injury. Depending on the policy purchased, this could cover expenses such as emergency room costs, hospital bills, drugs costs, and medical or surgical treatment. These policies are also similar to general “accident insurance” policies, which employers sometimes offer to employees as part of a benefits package to fill gaps not covered by health insurance after an injury. Nonprofits should discuss with an insurance broker what types of policies are available and which makes the most sense for its volunteer activities.

As mentioned above, nonprofits may be reluctant to ask volunteers to sign a waiver, for fear that it may offend the volunteer, discourage their service, or even appear to go against the nonprofit’s

charitable mission. However, protecting the nonprofit from financial liability is necessary to ensure it can continue to further its charitable mission and activities, and a waiver of liability is a tool to provide such protection. Having insurance coverage for the volunteer in addition to the waiver of liability may potentially offset a nonprofit's reluctant feelings to require a waiver, since insurance coverage for volunteers serves to protect the volunteers themselves, in contrast with the waiver of liability, which serves to protect the nonprofit. Ultimately, the tools and resources discussed in this article are designed to ensure nonprofits can safely and effectively perform their critical work in service of our communities.