

Is Volunteer Labor A Good Thing For Your Community Association?

Mounting delinquencies, the result of resetting sub-prime loan interest rates, and escalating foreclosures have caused community associations to find more creative ways to live within their budgets. If your Association is attempting to stay solvent by relying on volunteer labor to substitute for the more conventional, subcontracted (and insured) kind, you're not alone.



Volunteerism continues to enjoy popularity. The American Association of Retired Persons (AARP) conducted a study in 2003 which reported that 80% of Americans aged 45 and older are involved with “helping others without pay.” Granted, while most volunteerism involves churches, hospitals, schools, and coaching pursuits – such as soccer and little league – the poll indicated that “neighborhood volunteerism” accounted for nearly 47% of the total.

For a community association, volunteer labor has potential for being a thorny issue. Condominium attorneys, risk managers and insurance professionals routinely recommend against volunteer labor arguing that the “risk transfer” achieved by using licensed and insured contractors far outweighs any potential savings the HOA may reap using volunteers.

When a person volunteers their services, who is responsible for their actions? More specifically, if a volunteer is injured while performing a task they voluntarily offered to complete, who is responsible for their injuries? And, if the decision is made to purchase a policy to cover volunteers under the HOA's workers' compensation does it immediately solve issues of responsibility? And, quite frankly, is covering the volunteer under a workers' compensation policy really a good idea?

While it is mandatory for all employers to maintain workers' compensation coverage, it is not mandatory for a community association to purchase a workers' compensation policy that covers volunteer laborers. When coverage for volunteers is available, does it really make good business sense to have the policy so amended to cover them?

Workers' compensation is often described as an “exclusive remedy.” This means that, in most circumstances, a person who is covered by workers' compensation is barred from suing their employer in civil court if they sustain a work-related injury. Under workers' compensation law, recoveries are limited to specified benefits to remedy such issues as disability, medical costs and, if necessary, the cost to retrain the injured worker for another occupation. In exchange for those benefits, the injured worker cannot receive compensation for pain and suffering. Generally, the awards paid under a workers' compensation policy are smaller than if the individual sued the entity directly.

The trade-off is that workers' compensation is a “no-fault” system. Under a commercial general liability policy, the injured party must show that the community association was negligent. No such requirement exists under workers' compensation law. The injured person need only prove that it happen in the course of their “duties.” As a result, it's easier to recover benefits under a workers' compensation policy. Some Boards of Directors consider a workers' compensation claim one where they have “no control of the outcome” but even when a general liability claim is tendered, the Association has little control over what will happen in the end.

So, should every Board of Directors immediately adopt a resolution to cover “volunteers” under their workers' compensation policy? Not so fast. It's important to first consider the following:

- 1). **Not all carriers offer coverage for “volunteers.”** A specific resolution must be passed by the Board in order to extend coverage to voluntary workers. But that’s only part of the equation. Not all workers’ compensation policies allow for coverage of volunteers. Furthermore, even some that do still exclude volunteers other than those specifically appointed by the Board .
- 2). **May all that show up for a “work day” participate?** If a volunteer “shows up” on a community clean up day, (and has not been formally appointed by the Board), would there be coverage? It may depend on the carrier and their approach to “volunteers.” What exposure exists for the Community Manager and the Board for allowing this person to work?
- 3). **Carriers who do provide coverage for volunteers typically require a three-step process.** In order to qualify for coverage: a) The Board must pass a resolution; b) The Association must purchase coverage from a carrier that is willing to extend coverage to volunteers; and c) The volunteer must be specifically appointed by the Board to a committee. The carrier recommends this last step be documented in writing within the Board’s meeting minutes.
- 4). **Potential Conflicts Abound.** What if the volunteer is a great worker, but has poor financial habits? What potential conflict exists if the Association’s formally appointed “volunteer” is also past due on their monthly homeowners dues? What if they haven’t paid their homeowners dues but volunteered 35 hours of their time in one month?
- 5). **Good help is hard to find -- a ”Slippery Slope.”** - Volunteers may be great at changing light bulbs, but what if the work involves a greater skill set? Where will the Board of Directors “draw the line” between which projects can be reasonably performed by volunteers and which cannot? Certain projects like lawn mowing, hedge trimming, and pool maintenance seem easy enough but can be great sources of injuries. How will your Board decide which projects are okay to use volunteers for?
- 6). **Does volunteer labor really result in a “savings?” Or could it just mean more liability for the Board and the Community Manager?** Is the Association liable to the public if the volunteer allows for a hazardous condition to exist? What, if any, additional exposure does the Association have because the homeowner volunteer is now a recognized “employee” for the purposes of the workers’ compensation policy?

Exactly what long-term costs result from replacing subcontracted workers (complete with contractor’s license, liability and workers’ compensation coverage) for volunteer labor are hard to calculate. And it does seem almost un-American to reject volunteerism. There are, however, some very important issues for the Board and Community Manager to consider first and, as always, caution should be exercised to determine precisely when (and if) volunteers can be utilized.

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